

JUN 1 1990

~~JOSEPH E~~ SPANIOLO, JR.  
CLERK

No. 89-1279

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1989

**PACIFIC MUTUAL LIFE INSURANCE COMPANY,**  
*Petitioner,*

vs.

**CLEOPATRA HASLIP, CYNTHIA CRAIG,  
ALMA M. CALHOUN and EDDIE HARGROVE,**  
*Respondents.*

ON WRIT OF CERTIORARI  
TO THE SUPREME COURT OF ALABAMA

**JOINT APPENDIX**

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**PETITION FOR CERTIORARI FILED FEBRUARY 7, 1990**  
**CERTIORARI GRANTED APRIL 2, 1990**

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## RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
5/25/82	Summons and Complaint
6/22/82	Amended Complaint
10/4/82	Answer Filed by Lemmie L. Ruffin, Jr.
10/22/82	Answer Filed by Pacific Mutual Life Insurance Company
9/18/86	Second Amended Complaint
5/29/87	Amendment to Answer, Adding Constitutional Affirmative Defenses, Filed by Pacific Mutual Life Insurance Company
7/15/87	Amendment to Answer, Adding Constitutional Affirmative Defense, Filed by Pacific Mutual Life Insurance Company
8/6/87	Motion for Directed Verdict filed by Pacific Mutual Life Insurance Company
8/6/87	Requested Jury Charges by Cleopatra Haslip
8/6/87	Requested Instructions to the Jury by Pacific Mutual Life Insurance Company
8/6/87	Trial Memorandum of Pacific Mutual Life Insurance Company



8/7/87 Notice of Appeal to the Supreme Court of  
Alabama by Pacific Mutual Life Insurance  
Company

12/11/87 Opinion by Jefferson County Circuit Court

1/22/88 Notice of Appeal

9/15/89 Opinion Released by Supreme Court of  
Alabama

11/9/89 Order Denying Rehearing by the Supreme  
Court of Alabama

12/6/89 Order Denying Petition for Stay by the  
Supreme Court of Alabama

12/22/89 Order Granting Stay by Justice Kennedy of  
the Supreme Court of the United States

1/8/90 Order Granting Stay by the Supreme Court  
of the United States

2/7/90 Petition for Certiorari Filed

4/2/90 Certiorari Granted

[COMPLAINT]

IN THE CIRCUIT COURT  
TENTH JUDICIAL CIRCUIT  
FOR JEFFERSON COUNTY, ALABAMA

FILED IN OFFICE  
MAY 25 1982  
Polly Conradi  
Clerk of Circuit Court  
Jefferson County, AL

CLEOPATRA HASLIP; CYNTHIA CRAIG;  
ALMA M. CALHOUN; and EDDIE HARGROVE,  
Plaintiffs,

vs.

LEMMIE L. RUFFIN, JR.; LEMMIE L. RUFFIN, JR.,  
d/b/a L. L. RUFFIN INSURANCE AGENCY; PACIFIC  
MUTUAL LIFE INSURANCE COMPANY; A, B, C,  
and D, the persons, firms, corporations, partnerships or  
other entities who committed the acts or are responsible  
for the wrongful conduct described in this complaint or  
the injuries and damages to the plaintiffs at the times and  
placed described in this complaint whose true and cor-  
rect names and legal descriptions are otherwise unknown  
to the plaintiffs, but will be added by amendment when  
ascertained.

Defendants.

CIVIL ACTION NO. CV82 2453  
COMPLAINT

Count I

1. Plaintiffs are over the age of nineteen (19) years  
and are resident citizens of Jefferson County, Alabama.

2. Defendant, Lemmie L. Ruffin, Jr. is over the age of nineteen (19) years and is a resident citizen of Jefferson County, Alabama.

3. Defendant L. L. Ruffin Insurance Agency is a proprietorship owned by defendant Lemmie L. Ruffin doing business in Jefferson County, Alabama.

4. Pacific Mutual Life Insurance Company is a corporation organized and existing under the laws of the State of California and doing business in Jefferson County, Alabama.

5. Fictitious parties, A. B. C. and D are the persons, firms, corporations, partnerships, or other entities whose names, addresses, places of residence or states of incorporation are otherwise unknown, but will be added by amendment when ascertained.

6. On or about September 1, 1981, Defendants, for a valuable consideration, agreed to provide policies of life, accidental death and dismemberment and major medical insurance to Plaintiffs, Cleopatra Haslip, Cynthia Craig and Alma M. Calhoun. On or about September 1, 1981 Defendants, for a valuable consideration, agreed to provide a policy of life insurance to Plaintiff, Eddie Hargrove.

7. The coverage to be provided Plaintiffs was group policy coverage. The insurers were Union Fidelity Life Insurance Company and Defendant, Pacific Mutual Life Insurance Company.

8. Shortly after the policy was issued by Union Fidelity Life Insurance Company, Defendants represented to Plaintiffs that Union Fidelity Life Insurance Company was terminating its coverage. Defendants further represented to Plaintiffs that policies of insurance providing the exact same coverage would be procured on their behalf immediately.

9. On or about February 2, 1982 defendant Lemmie L. Ruffin, Jr. the proprietor of defendant L. L. Ruffin Insurance Agency and an agent, servant or employee of Pacific Mutual Life Insurance Company, sent a Western Union Mailgram to plaintiff Cleopatra Haslip stating that the company then providing coverage was cancelling coverage as of the effective date of her request, that all coverage would cease as of the effective date, and that all premiums paid would be refunded.

10. Plaintiffs aver that Cleopatra Haslip did not, nor did any of the plaintiffs ever at any time request the insurance coverage to be cancelled. Plaintiffs further aver that no premiums have ever been refunded.

11. Plaintiffs aver that Defendants falsely and fraudulently represented to the plaintiffs that upon the termination of the Union Fidelity Life Insurance Company's policies, other policies containing the same benefits would be provided.

12. Plaintiffs aver that after the termination of the Union Fidelity Life Insurance Company policies, Defendants falsely and fraudulently represented to Plaintiffs that other insurance coverage was in effect on their behalf.

13. Plaintiffs aver that if any insurance coverage was in effect or provided after the termination of the Union Fidelity Life Insurance Company policy, that Defendants falsely and fraudulently terminated said policies without Plaintiffs' knowledge or permission and falsely and fraudulently represented that all premiums previously paid would be refunded.

14. The representations made by Defendants were false, and Defendants knew that they were false; or Defendants, without knowledge of the true facts, recklessly misrepresented them; or said representations were

made by mistake, but with the intention that Plaintiffs should rely upon them.

15. Plaintiffs believed the representations and relied upon them and paid a valuable consideration to Defendants. In addition to the payment of a valuable consideration for insurance coverage, plaintiff Cleopatra Haslip incurred numerous medical expenses for which Defendants failed to provide coverage.

WHEREFORE, Plaintiffs demand judgment against Defendants for the sum of one million dollars (\$1,000,000.00), interest and costs, including punitive damages.

#### Count II

1. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 15 in Count I above.

2. Plaintiffs aver that Defendants breached their agreement with Plaintiffs by failing to provide policies of life, accidental death and dismemberment and major medical insurance coverage to Plaintiffs upon the termination of the Union Fidelity Life Insurance Company policies.

3. Plaintiffs aver that if any coverage on Plaintiffs' behalf was provided by Defendants after the termination of the Union Fidelity Life Insurance coverage, that Defendants breached their agreement with Plaintiffs by terminating said coverage without permission, authority or knowledge of Plaintiffs and by refusing to refund all premiums previously paid.

4. Plaintiffs aver that Defendants breached their agreement with Plaintiffs by failing to provide insurance coverage to insure against medical and hospitalization

expenses actually incurred by Plaintiff, Cleopatra Haslip.

WHEREFORE, Plaintiffs demand judgment against Defendants in the sum of two hundred fifty thousand dollars (\$250,000.00), interest and costs.

#### Count III

1. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 15 in Count I above.

2. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 4 in Count II above.

3. Plaintiffs aver that Defendants in an effort to have Plaintiffs pay sums of money to Defendants falsely and fraudulently misrepresented certain material facts, known to be false at the time said representations were made, which were relied on by Plaintiffs to their detriment. Defendants' conduct was so extreme in degree and so outrageous as to be conduct committed in bad faith.

WHEREFORE, Plaintiffs demand judgment against Defendants in the sum of one million dollars (\$1,000,000.00), interest and costs, including punitive damages.

#### Count IV

1. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 15 in Count I above.



2. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 4 in Count II above.

3. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 3 in Count III above.

4. Plaintiffs aver that the fictitious parties named herein, are the individuals, proprietorships, partnerships, corporations or other entities whose names and addresses are otherwise unknown to Plaintiffs but will be added by amendment when ascertained.

5. Plaintiffs aver that the fictitious parties named herein, made the same false and fraudulent representations to Plaintiffs as did the named Defendants regarding the policies of insurance, that Plaintiffs believed the representations and relied upon them and were injured as a result.

WHEREFORE, Plaintiffs demand judgment against the fictitious parties for the sum of one million dollars (\$1,000,000.00), interest and costs, including punitive damages.

#### Count V

1. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 15 in Count I above.

2. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 4 in Count II above.

3. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 3 of Count III above.

5.[sic] Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 5 in Count IV above.

6. Plaintiffs aver that the fictitious party defendants breached their agreement with Plaintiffs in that the fictitious party defendants failed to provide insurance coverage upon the termination of the Union Fidelity Life Insurance policy. That is any insurance coverage was in effect after the termination of the Union Fidelity Life Insurance Company policies, the fictitious party defendants terminated said policies of insurance without the permission or knowledge of Plaintiffs and that the fictitious party defendants failed to refund all premiums previously paid.

WHEREFORE, Plaintiffs demand judgment against the fictitious party defendants for two hundred fifty thousand dollars (\$250,000.00), plus interest and costs.

#### Count VI

1. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 15 in Count I above.

2. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 4 in Count II above.

3. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 3 in Count III above.

4. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 5 in Count IV above.

5. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 6 in Count V above.

6. Plaintiffs aver that the fictitious party defendants, in an effort to have Plaintiffs pay sums of money to fictitious party defendants, falsely and fraudulently misrepresented certain material facts, known to be false at the time said representations were made, which were relied on by Plaintiffs to their detriment. Fictitious party defendants' conduct was so extreme in degree and so outrageous as to be conduct committed in bad faith.

WHEREFORE, Plaintiffs demand judgment against fictitious party defendants in the sum of one million dollars (\$1,000,000.00), interest and costs, including punitive damages.

/s/ Robert H. Adams  
**ROBERT H. ADAMS**  
Attorney for Plaintiffs

OF COUNSEL:  
CORRETTI & NEWSOM  
1804 7th Avenue North  
Birmingham, Alabama 35203  
(205) 251-1164

Plaintiffs demand a trial by struck jury.

/s/ Robert H. Adams  
**ROBERT H. ADAMS**  
Attorney for Plaintiffs

[Certificate of service omitted in printing.]

[AMENDED COMPLAINT]

IN THE CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA

FILED IN OFFICE  
JUN 22 1982  
Polly Conradi  
Clerk of Circuit Court  
Jefferson County, AL

CLEOPATRA HASLIP; CYNTHIA CRAIG;  
ALMA M. CALHOUN; and EDDIE HARGROVE,  
Plaintiffs,

vs.

LEMMIE L. RUFFIN, JR.; LEMMIE L. RUFFIN, JR.,  
d/b/a/ L. L. RUFFIN INSURANCE AGENCY; PACIFIC  
MUTUAL LIFE INSURANCE COMPANY; A, B, C,  
and D, the persons, firms, corporations, partnerships or  
other entities who committed the acts or are responsible  
for the wrongful conduct described in this complaint or  
the injuries and damages to the plaintiffs at the times and  
places described in this complaint whose true and correct  
names and legal descriptions are otherwise unknown to  
the plaintiffs, but will be added by amendment when  
ascertained,

Defendants.

CIVIL ACTION NO. CV82 2453

AMENDED COMPLAINT

Come now Plaintiffs in the above-styled cause and  
amends their complaint heretofore filed by adding the  
following counts:



### COUNT VII

1. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 15 in Count I of the original Complaint.

2. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 4 in Count II of the original Complaint.

3. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 3 in Count III of the original Complaint.

4. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 5 in Count IV of the original Complaint.

5. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 6 in Count V of the original Complaint.

6. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 6 in Count VI of the original Complaint.

7. Plaintiffs aver that Defendants, in an effort to have Plaintiffs pay sums of money to Defendant, falsely and fraudulently misrepresented certain material facts, known to be false at the time said representations were made, which were relied on by Plaintiffs to their detriment. Defendants' conduct was so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, utterly intolerable and outrageous.

WHEREFORE, Plaintiffs demand judgment against Defendants in the sum of one million dollars

(\$1,000,000.00), interest and costs, including punitive damages.

### COUNT VIII

1. Plaintiffs adopt and incorporate by reference each and every allegations and averment in numbered paragraphs 1 through 15 in Count I of the original Complaint.

2. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 4 in Count II of the original Complaint.

3. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 3 in Count III of the original Complaint.

4. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 5 in Count IV of the original Complaint.

5. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 6 in Count V of the original Complaint.

6. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 6 in Count VI of the original Complaint.

7. Plaintiffs adopt and incorporate by reference each and every allegation and averment in numbered paragraphs 1 through 7 in Count VII of the Amended Complaint.

8. Plaintiffs aver that the fictitious party defendants, in an effort to have Plaintiffs pay sums of money to

fictitious party defendants, falsely and fraudulently [sic] misrepresented certain material facts, known to be false at the time said representations were made, which were relied on by Plaintiffs to their detriment. Fictitious party defendants' conduct was so extreme in degree as to go beyond all possible bounds of decency, and to be regarded as atrocious, utterly intolerable, and outrageous.

WHEREFORE, Plaintiffs demand judgment against fictitious party defendants in the sum of one million dollars (\$1,000,000.00), interest and costs, including punitive damages.

/s/ Robert H. Adams  
ROBERT H. ADAMS  
Attorney for Plaintiffs

OF COUNSEL:  
CORRETTI & NEWSOM  
1804 7th Avenue North  
Birmingham, Alabama 35203  
(205) 251-1164

\* \* \* \*

[Certificate of service omitted in printing.]

[RUFFIN'S ANSWER TO COMPLAINT]

CIRCUIT COURT  
TENTH JUDICIAL CIRCUIT OF ALABAMA  
FOR JEFFERSON COUNTY, ALABAMA

FILED IN OFFICE  
OCT 4 1982  
Polly Conradi  
Clerk of Circuit Court  
Jefferson County, AL

CLEOPATRA HASLIP; CYNTHIA CRAIG;  
ALMA M. CALHOUN; and EDDIE HARGROVE,  
Plaintiffs  
vs.

LEMMIE L. RUFFIN, JR.; LEMMIE L. RUFFIN, JR.,  
d/b/a L. L. RUFFIN INSURANCE AGENCY; PACIFIC  
MUTUAL INSURANCE COMPANY, et al,  
Defendants.

CIVIL ACTION NO: CV 82-2453

ANSWER

Comes now the Defendant, Lemmie L. Ruffin, Jr., and answers the Complaint previously filed in this cause as follows:

COUNT ONE

1. Defendant denies each and every allegation and demands strict proof thereof.
2. The Complaint fails to state a claim against Defendant upon which relief can be granted.

COUNT TWO

1. Defendant denies each and every allegation and demands strict proof thereof.
2. The Complaint fails to state a claim against Defendant upon which relief can be granted.

COUNT THREE

1. Defendant denies each and every allegation and demands strict proof thereof.
2. The Complaint fails to state a claim against Defendant upon which relief can be granted.

COUNT FOUR

1. Defendant denies each and every allegation and demands strict proof thereof.
2. The Complaint fails to state a claim against Defendant upon which relief can be granted.

COUNT FIVE

1. Defendant denies each and every allegation and demands strict proof thereof.
2. The Complaint fails to state a claim against Defendant upon which relief can be granted.

COUNT SIX

1. Defendant denies each and every allegation and demands strict proof thereof.

2. The Complaint fails to state a claim against Defendant upon which relief can be granted.

By: HANES & HANES  
/s/ Thomas B. Hanes  
Thomas B. Hanes  
Attorney for Defendant,  
Lemmie L. Ruffin, Jr.  
933 Frank Nelson Building  
Birmingham, Alabama 35203-3676  
Phone: (205) 324-9536

[Certificate of service omitted in printing.]

[ANSWER OF PACIFIC MUTUAL]

IN THE CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA

FILED IN OFFICE  
OCT 22 1982  
Polly Conradi  
Clerk of Circuit Court  
Jefferson County, AL

CLEOPATRA HASLIP; CYNTHIA CRAIG;  
ALMA M. CALHOUN, and EDDIE HARGROVE,  
Plaintiffs,

vs.

LEMMIE L. RUFFIN, JR.; LEMMIE L. RUFFIN, JR.,  
d/b/a/ L. L. RUFFIN INSURANCE AGENCY; PACIFIC  
MUTUAL LIFE INSURANCE COMPANY, et al.,  
Defendants.

CIVIL ACTION NO. CV 82-2453

ANSWER

Comes the defendant, PACIFIC MUTUAL LIFE  
INSURANCE COMPANY, a corporation, and for an-  
swer to the complaint as last amended says:

FIRST DEFENSE

Defendant denies the material averments of each and  
every count of the complaint as last amended.



SECOND DEFENSE

This defendant denies that it is indebted to the plaintiffs under any policy of insurance.

THIRD DEFENSE

This defendant denies that it issued any policy of insurance which provided any coverage for Major Medical expenses to the plaintiffs.

FOURTH DEFENSE

This defendant denies that it made any misrepresentations to the plaintiffs or committed any fraud with respect to the plaintiffs with respect to any insurance as alleged in the complaint.

FIFTH DEFENSE

Defendant denies that has [*sic*] acted in bad faith with respect to the plaintiffs and alleges that the plaintiffs were never insureds of this defendant under any policies of health or Major Medical insurance and avers that this defendant has never denied any claim for medical expenses made under any policy of insurance issued by this defendant.

SIXTH DEFENSE

This defendant denies that it ever represented to the plaintiffs at any time that it would issue policies of Major Medical insurance covering the plaintiffs.

SEVENTH DEFENSE

This defendant denies that it has ever engaged in any conduct toward the plaintiffs which was atrocious, utterly intolerable, outrageous, or beyond all possible bounds of decency.

/s/ Ollie Blan  
Ollie L. Blan, Jr.  
Attorney for Defendant

OF COUNSEL:

SPAIN, GILLON, RILEY,  
TATE & ETHEREDGE  
1700 John A. Hand Building  
Birmingham, Alabama 35203  
Telephone: (205) 328-4100

[Certificate of service omitted in printing.]



[MOTION TO WITHDRAW BY  
RUFFIN'S ATTORNEY]

IN THE CIRCUIT COURT  
FOR THE TENTH JUDICIAL CIRCUIT  
OF ALABAMA FOR  
JEFFERSON COUNTY, ALABAMA

FILED IN OFFICE  
June 5 1984  
Polly Conradi  
Clerk

GRANTED  
/s/ John E. Bryan, Jr.  
Judge                      Date  
6/21/84

CLEOPATRA HASLIP, et al.,  
Plaintiff,  
vs.  
LEMMIE L. RUFFIN, JR., et al.,  
Defendant.

CASE NO.: CV 82-2453

MOTION TO WITHDRAW

Comes now, Thomas B. Hanes, Attorney of Record for the Defendant, Lemmie Ruffin, Jr., and requests leave of Court to withdraw as counsel for the Defendant and as grounds therefor states that certain differences have arisen between attorney and client such that the attorney cannot be expected to continue his representation in this cause. The undersigned counsel further represents to the Court that this case has not been

announced ready for trial and that no prejudice will result to the other parties if he is allowed to withdraw as counsel.

HANES and HANES

By: /s/ Thomas B. Hanes  
Thomas B. Hanes  
933 Frank Nelson Building  
Birmingham, Alabama 35203-3676  
Phone: (205) 324-9536

NOTICE OF HEARING

The above and foregoing Motion will be heard before the presiding Judge on Thursday, June 21, 1984, at 10:00 a.m., Room 306 of the Jefferson County Courthouse, Birmingham, Alabama.

By: /s/ Thomas B. Hanes  
Thomas B. Hanes

[Certificate of service omitted in printing.]

[PLAINTIFFS' AMENDED COMPLAINT]

IN THE CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA

FILED IN OFFICE  
SEP 18 1986  
Polly Conradi  
Clerk of Circuit Court  
Jefferson County, AL

CLEOPATRA HASLIP, et al.,  
Plaintiffs,  
vs.

PACIFIC MUTUAL LIFE INSURANCE  
COMPANY, et al.,  
Defendants.

CV-82-2453

AMENDED COMPLAINT

Come now the plaintiffs in this cause of action, and amend their complaint and first amended complaint as follows:

1. The plaintiffs readopt, reaver and incorporate in their entirety the complaint and first amended complaint as if fully set out herein and attached hereto and incorporate herein the complaint and first amended complaint.

COUNT IX

2. The plaintiffs readopt, reaver and incorporate each and every averment in Counts I through VIII of their complaint and first amended complaint as if fully set out

herein. At the aforesaid time and place, and as a result of the intentional, oppressive, gross and malicious fraud and deceit perpetrated by the defendants, separately and severally against the plaintiff, in violation of the Code of Alabama, §§ 6-5-101, 6-5-102, 6-5-103 and 6-5-104, the plaintiffs were caused to sustain and suffer monetary damages and great mental and emotional distress, worry, anger, frustration, embarrassment and humiliation.

WHEREFORE, PREMISES CONSIDERED, the plaintiffs separately and severally demand judgment against the defendants, separately and severally, and compensatory damages and punitive damages in the sum of FIVE MILLION FIVE HUNDRED THOUSAND and no/100ths DOLLARS (\$5,500,000.00), plus interest from the date of judgment and the costs of this action.

COUNT X

3. The plaintiffs readopt, reaver and incorporate each and every averment in Counts I through IX of their complaint and amended complaints as if fully set out herein. At the aforesaid time and place, and at times prior and subsequent thereto, the defendants engaged in a conspiracy to defraud and/or a common scheme to defraud the plaintiffs and other innocent victims similarly situated and as a result thereof, the plaintiffs and others similarly situated, were caused to sustain and suffer monetary damages and great emotional and mental distress, worry, anger, frustration, embarrassment and humiliation.

WHEREFORE, PREMISES CONSIDERED, the plaintiffs, separately and severally, demand judgment against the defendants, separately and severally, and compensatory damages and punitive damages in the sum of FIVE MILLION FIVE HUNDRED THOUSAND and

no/100ths DOLLARS (\$5,500,000.00), plus interest from the date of judgment and the costs of this action.

Respectfully submitted,

/s/ Charles E. Sharp  
Mr. Charles E. Sharp  
Attorney for Plaintiffs  
1100 First National-So. Natural Bldg.  
Birmingham, Alabama 35203  
(205) 326-4166

/s/ Joel A. Williams  
Mr. Joel A. Williams  
Attorney for Plaintiffs

OF COUNSEL:

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Birmingham, Alabama 35203

Mr. Robert H. Adams  
NAJJAR, DENABURG, SCHOEL,  
MEYERSON, OGLE & ZARZAUR  
2125 Morris Avenue  
Birmingham, Alabama 35203

Plaintiffs demand a struck jury for the trial of this action.

/s/ Joel A. Williams  
OF COUNSEL

[Certificate of service omitted in printing.]

[PACIFIC MUTUAL AMENDMENT TO ANSWER]

IN THE CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA

FILED IN OFFICE  
MAY 29 1987  
Polly Conradi  
Clerk of Circuit Court  
Jefferson County, AL

CLEOPATRA HASLIP, et al  
Plaintiffs

v.

PACIFIC MUTUAL LIFE  
INSURANCE COMPANY, et al  
Defendants

CIVIL ACTION NO. CV 82-2453  
AMENDMENT TO ANSWER

Comes defendant, Pacific Mutual Life Insurance Company, a corporation, and amends its Answer heretofore filed by adding the following:

EIGHTH DEFENSE

Defendant avers that the actions of Lemmie L. Ruffin, Jr. as described in the Complaint were beyond and outside the line and scope of any authority which Lemmie L. Ruffin had with this defendant.

NINTH DEFENSE

This defendant denies that Lemmie L. Ruffin, Jr. was authorized by this defendant to solicit applications for,



take applications for, collect any premiums for, or make any representations with respect to any policies of medical or health insurance with Union Fidelity Life Insurance Company or with any other company.

#### TENTH DEFENSE

Defendant denies that Lemmie L. Ruffin, Jr. was acting within the line and scope of his authority with this defendant in making any of the alleged misrepresentations to the plaintiffs, or in collecting any premiums from the plaintiffs and failing to remit said premiums to any insurance company.

#### ELEVENTH DEFENSE

Defendant denies that it has any connection with, liability for, or responsibility for any agents, servants or employees of Union Fidelity Insurance Company and for any policies of insurance issued by said company, or any promises made on behalf of said company regarding policies of insurance.

#### TWELFTH DEFENSE

This defendant denies that it has been negligent in any way in the selection, screening, financing, supervising, or training of Lemmie Ruffin.

#### THIRTEENTH DEFENSE

Defendant denies that there is any cause of action under the law of Alabama for negligence or other liability to a third party for the failure of an insurance

company to select, screen, finance, supervise, or train a soliciting insurance agent.

#### FOURTEENTH DEFENSE

Defendant denies that it has been guilty of any conduct which entitles plaintiff to recover punitive damages.

#### FIFTEENTH DEFENSE

Defendant avers that the Complaint fails to state a claim upon which punitive damages may be awarded to plaintiff.

#### SIXTEENTH DEFENSE

Defendant avers that any award of punitive damages to plaintiff in this case will be violative of the constitutional safeguards provided to defendant under the Constitution of the State of Alabama.

#### SEVENTEENTH DEFENSE

Defendant avers that any award of punitive damages to plaintiff in this case will be violative of the constitutional safeguards provided to defendant under the Constitution of the United States of America.

#### EIGHTEENTH DEFENSE

Defendant avers that any award of punitive damages to plaintiff in this case will be violative of the constitutional safeguards provided to defendant under the Due



Process Clause of the Fourteenth Amendment to the Constitution of the United States in that punitive damages are vague and are not rationally related to legitimate government interests.

#### NINETEENTH DEFENSE

Defendant avers that any award of punitive damages to plaintiff in this case will be violative of Article I, Section 6 of the Constitution of the State of Alabama which provides that no person shall be deprived of life, liberty, or property except by due process of law, in that punitive damages are vague and are not rationally related to legitimate government interests.

#### TWENTIETH DEFENSE

Defendant avers that any award of punitive damages to plaintiff in this case will be violative of the procedural safeguards provided to defendant under the Sixth Amendment to the Constitution of the United States in that punitive damages are penal in nature and consequently, defendant is entitled to the same procedural safeguards accorded to criminal defendants.

#### TWENTY-FIRST DEFENSE

It is violative of the self-incrimination clause of the Fifth Amendment to the Constitution of the United States of America to impose against this defendant punitive damages, which are penal in nature, yet compel defendant to disclose potentially incriminating documents and evidence.

#### TWENTY-SECOND DEFENSE

It is violative of the self-incrimination clause of Article I, Section 6 of the Constitution of the State of Alabama to impose against this defendant punitive damages, which are penal in nature, yet compel defendant to disclose potentially incriminating documents and evidence.

#### TWENTY-THIRD DEFENSE

It is violative of the rights guaranteed by the Constitution of the United States of America and the Constitution of the State of Alabama to impose punitive damages against this defendant which are penal in nature by requiring a burden of proof on plaintiff which is less than the "beyond a reasonable doubt" burden of proof required in criminal cases.

#### TWENTY-FOURTH DEFENSE

It is discriminatory, a deprivation of due process and a violation of the equal protection rights guaranteed by the Fourteenth Amendment to the Constitution of the United States of America and Article I, Sections 1, 6, and 22 of the Constitution of the State of Alabama to impose punitive damages for the violation of the covenant of good faith and fair dealing *only* in contracts between insurers and insureds and not in *all* contracts in Alabama, since the same covenants of good faith and fair dealing exist not only in insurance contracts but also in *all* contracts in the State of Alabama.

TWENTY-FIFTH DEFENSE

Defendant avers that any award of punitive damages to the plaintiff in this case will be violative of Article I, Section 10 of the Constitution of the United States in that it will be a retrospective imposition of punitive damages under a new cause of action first recognized by the Supreme Court of the State of Alabama in 1981 which was subsequent to the issue of the policy of insurance sued upon in this case.

TWENTY-SIXTH DEFENSE

Defendant avers that any award of punitive damages to plaintiff in this case will be violative of the Eighth Amendment to the Constitution of the United States in that said damages would be an excessive fine in violation of the Excessive Fines Clause of the Eighth Amendment to the United States Constitution.

TWENTY-SEVENTH DEFENSE

Defendant avers that any award of punitive damages to the plaintiff in this case will be violative of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States in that it would provide damages to the plaintiff in excess of the amount determined to be appropriate under the formula adopted by the Alabama Legislature in 1981 in Section 27-1-17, *Code of Alabama* 1975, as amended.

/s/ Ollie L. Blan Jr.  
Ollie L. Blan, Jr.  
Attorney for Defendant  
Pacific Mutual Life Ins. Co.

OF COUNSEL:

SPAIN, GILLON, TATE, GROOMS & BLAN  
The Zinszer Building  
2117 Second Avenue North  
Birmingham, Alabama 35203  
(205) 328-4100

[Certificate of service submitted in printing.]

[MOTION FOR DIRECTED VERDICT]

IN THE CIRCUIT COURT OF  
JEFFERSON COUNTY, ALABAMA

**FILED IN OPEN COURT**

This 6 day of August, 19 87

Polly Conradi

Clerk, Circuit Court

By /s/ Jay Holloway

Deputy Clerk

**OVERRULED**

/s/ Charles R. Crowder

Judge Date

CLEOPATRA HASLIP, et al

Plaintiffs

v.

PACIFIC MUTUAL LIFE

INSURANCE COMPANY, et al

Defendants

CIVIL ACTION NO. CV 82-2453  
MOTION FOR DIRECTED VERDICT

Comes now defendant Pacific Mutual Life Insurance Company at the close of all the evidence offered in this cause and moves the Court for a directed verdict separately and severally as to the claims of each plaintiff against this defendant.

Pacific Mutual states that it is entitled to a directed verdict for the following grounds:

1. No evidence has been offered or received which raises a jury issue as to any claim in the Complaint against this defendant.



2. The testimony and all the inferences which the jury could justifiably draw therefrom will be sufficient to support a verdict for the plaintiffs under any claim of the Complaint against this defendant.

3. The evidence does not establish facts sufficient to sustain a verdict in favor of the plaintiffs under any claim of the Complaint against this defendant.

4. The plaintiffs have failed to prove any cause of action attempted to be alleged in their Complaint or any other cause against this defendant.

5. The weight of the evidence establishes that the plaintiffs have failed to sustain their burden to prove the causes of action alleged in the Complaint against this defendant.

6. All the facts and inferences point strongly and overwhelmingly in favor of this defendant so that reasonable persons could not arrive at a contrary verdict other than one in favor of this defendant.

7. The plaintiffs have failed to prove the material allegations of their Complaint against this defendant.

8. Any verdict for the plaintiffs against this defendant will be based on sheer guess, speculation and conjecture, and not any material or relevant testimony or reasonable inference therefrom.

9. There is no evidence of any fraud or misrepresentation on the part of this defendant to persuade plaintiffs to take out any policy of insurance with defendant Pacific Mutual Life Insurance Company.

10. That there is no evidence Mr. Ruffin was acting as the agent for Pacific Mutual, or was acting within the line and scope of such agency, with respect to health insurance.

11. That the evidence conclusively shows that Mr. Ruffin, with respect to health insurance, was either acting as the agent of plaintiffs or was acting as the agent for some other insurer unrelated to Pacific Mutual.

12. That the evidence conclusively shows the actions of Mr. Ruffin with respect to collection of premiums were in violation of his agency with Pacific Mutual.

13. That the evidence conclusively shows Mr. Ruffin, with respect to collection of premiums, abandoned his agency with Pacific Mutual and was acting contrary to the interest of Pacific Mutual and was acting in furtherance of his own personal interests.

14. That the evidence conclusively shows that the actions, omissions or knowledge of Mr. Ruffin and/or Mr. Lupia with respect to health insurance are not imputable to Pacific Mutual because the same was not done or acquired while transacting the business of Pacific Mutual as its agent, but in transacting business on behalf of plaintiffs or some other insurer.

#### FRAUD

15. That there is no evidence that Pacific Mutual, by and through its agents while acting within the line and scope of their authority, made any misrepresentation to any of the plaintiffs.

16. That there is no evidence of the misrepresentation of a material fact to the plaintiffs.

17. That the evidence conclusively shows that no misrepresentations were made to plaintiffs Haslip, Calhoun, Craig and Hargrove because policies were in fact issued insuring said plaintiffs.

18. That the evidence conclusively shows that any representations by Mr. Ruffin were promises to perform

in the future and there is no evidence of his intent not to perform the promises when made.

19. That the evidence conclusively shows that the plaintiffs have not justifiably relied upon any misrepresentation.

20. That the plaintiffs have not suffered actual damage.

21. That Mr. Ruffin was not the agent of Pacific Mutual with respect to any acts or omissions concerning health insurance.

22. That there is no evidence that Mr. Ruffin suppressed or concealed material facts from plaintiffs.

23. That there is no evidence of a confidential relation or other particular circumstances giving rise to a duty to disclose.

24. That any misrepresentations concerning premium payments were not made to plaintiffs themselves.

25. That there is no evidence that any misrepresentations were made with fraudulent intent.

26. That the evidence conclusively shows any misrepresentations were made innocently and by mistake.

#### FAILURE TO PROCURE INSURE

27. That such an action does not lie against an insurer but only against an insurance agent.

28. That the evidence conclusively shows that health and life insurance was procured for plaintiffs.

29. That Mr. Ruffin was not acting as the agent of Pacific Mutual with respect to procuring health insurance.

#### TORT OF BAD FAITH

30. That there is no evidence of a contract of health insurance between Pacific Mutual and any of the plaintiffs.

31. That there is no evidence that claims were submitted by any of the plaintiffs to Pacific Mutual.

32. That there is no evidence of the denial of a claim of any of the plaintiffs by Pacific Mutual.

#### TORT OF OUTRAGE

33. That there is no evidence that the conduct of Pacific Mutual towards plaintiffs was extreme and outrageous in character so as to be utterly intolerable in a civilized society.

34. That there is no evidence that Mr. Ruffin was acting within the line and scope of his authority as an agent of Pacific Mutual engaging in any extreme and outrageous conduct.

#### CONSPIRACY

35. That there is no evidence Pacific Mutual participated in any conspiracy to defraud plaintiffs.

36. That the evidence conclusively shows Mr. Ruffin abandoned his agency and was acting in violation of the instructions of his principal in furtherance of his personal interests.



### NEGLIGENT TRAINING, SUPERVISION, ETC.

37. That there is no such action cognizable under the laws of the State of Alabama.

38. That plaintiffs have no standing to assert this cause of action.

39. That there is no evidence in support of this claim.

40. That the evidence conclusively shows Pacific Mutual was not negligent.

41. That the evidence conclusively shows plaintiffs themselves were contributorily negligent.

42. That the evidence conclusively shows that Pacific Mutual exercised reasonable care with respect to the training, supervision, etc., of Mr. Ruffin.

43. That the training, supervision, etc., was not the proximate cause of any loss to plaintiffs.

### PUNITIVE DAMAGE

44. That punitive damages may not be "vicariously" awarded against the principal for the act of its agent.

45. That punitive damage may not be awarded against the principal for the act of its agent unless the principal authorized, participated in, or ratified the act of its agent.

46. That there is no evidence Pacific Mutual had knowledge of, participated in, or ratified the actions of Mr. Ruffin complained of.

47. That the evidence conclusively shows Pacific Mutual was unaware of and did not condone the actions of Mr. Ruffin complained of.

48. An award of punitive damages to any of the plaintiffs in this case will be violative of the constitutional safeguards provided to this defendant under the Constitutions of the United States and the State of Alabama.

49. An award of punitive damages to any of the plaintiffs in this case will be violative of the due process clause of the Fourteenth Amendment to the Constitution of the United States and Article I, § 6 of the Constitution of the State of Alabama.

50. An award of punitive damages to any of the plaintiffs in this case will be violative of the Sixth Amendment to the Constitution of the United States and that punitive damages are penal in nature and, consequently, this defendant is entitled to the same procedural safeguards accorded to criminal defendants, which have not been afforded to defendant in this action.

51. An award of punitive damages to any of the plaintiffs in this case will be violative of the Fifth Amendment to the Constitution of the United States and Article I, § 6 of the Constitution of the State of Alabama.

52. An award of punitive damages to any of the plaintiffs in this case will be violative of the Constitution of the United States and the State of Alabama if the jury is allowed to assess punitive damages under a lesser burden of proof than "beyond a reasonable doubt" burden of proof required in criminal cases.

53. An award of punitive damages to any of the plaintiffs in this case will be violative of the Eighth Amendment to the Constitution of the United States and Article I, § 15 of the Constitution of the State of Alabama in that said damages would be an excessive fine.

54. An award of punitive damages to any of the plaintiffs in this case will be violative of the due process clause of the Fourteenth Amendment of the Constitution of the United States in that it would provide damages to the plaintiffs in excess of the amount determined to be appropriated under the formula adopted by the Alabama Legislature in 1981 in Ala. Code § 27-1-17 (1975), as amended.

/s/ Ollie L. Blan Jr.

Ollie L. Blan, Jr.

/s/ J Mark Hart

J. Mark Hart

Attorneys for Said Defendant

OF COUNSEL:

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[Certificate of service omitted in printing.]

**[REQUESTED JURY CHARGE  
OF CLEOPATRA HASLIP]**

Number Seven -

APJI 11.03 Punitive

The purpose of awarding punitive or exemplary damages is to allow money recovery to the plaintiffs by way of punishment to the defendants, and for the added purpose of protecting the public by deterring the defendants and others from doing such wrong in the future. The imposition of punitive damages is entirely discretionary with the jury. Should you award punitive damages, in fixing the amount, you must take into consideration the character and degree of the wrong as shown by the evidence in the case, and the necessity of preventing similar wrongs.

**[EXCERPT PAGES FROM  
REPORTER'S TRANSCRIPT]**

[Page 206 Cross Examination of CLEOPATRA HASLIP]

\* \* \* \*

out and took an application, that's the meeting I want to ask you about.

A Okay.

Q Okay. Are we together?

A Uh-huh

Q Okay. When he took those applications you knew at that time the health insurance was going to be with Union Fidelity, didn't you?

A No, I didn't.

Q Now, I want you to think about this answer, now. Are you sure —

A I'm sure.

Q — when you signed up for that that you didn't know that was going to be with Union Fidelity?

A I'm sure I didn't know that it was going to be with a different insurance company. He presented himself as a Pacific Mutual agent.

Q He gave you a card, didn't he?

A Yes.

Q And you got some Pacific Mutual life insurance, didn't you?

A My life insurance was a rider to the health insurance.

[Page 207 CLEOPATRA HASLIP]

Q But you did get life insurance?

A Yes, I did.

Q With Pacific Mutual, did you not?

A Yes, I did.

Q Okay. Do you remember when your deposition was taken in this case?

A Yes, I do.

Q Okay. Isn't it true that at that deposition I asked you a question and you told me that when you signed up for this health insurance with Mr. Ruffin you knew the health insurance was going to be with Union Fidelity?

A I don't think I told you I knew my health insurance was going to be with Union Fidelity at that time.

Q At that time, at this second meeting when you signed the application, didn't Mr. Ruffin also tell you that Pacific Mutual couldn't write the health insurance because it didn't issue that kind of insurance to municipalities?

A May I say what Mr. Ruffin said?

Q Well, did he tell you that fact, please, ma'am?

[Page 208 CLEOPATRA HASLIP]

A Okay. What he said —

Q At that meeting, did Mr. Ruffin tell you that Pacific Mutual couldn't issue health insurance to the city of Roosevelt?

A As a municipality?

Q Yes, ma'am.

A Yes.

Q And at that meeting after he told you that, he told you he would try to get health insurance with Union Fidelity?

A No, he told me that we will place you.

Q He would place you with Union Fidelity?

A No, he didn't say with Union Fidelity. He said —

Q How about another insurance company?

A He said we will place you and that as far as I was concerned, that was Pacific Mutual is who we were placed with.

Q Ms. Haslip, let's look at your deposition, here.

A All right.

Q Do you remember when you gave that; is that right?

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A I remember.

Q Okay. It looks like that was March 1st, 1984. Does that sound about right?

A Probably, I don't know the exact date.

Q Okay. And you were put under oath that day, weren't you?

A Sure.

Q Promised to tell the truth just like you did today?

A As far as I could tell.

Q And we had a court reporter like we do today?

A Sure did.

Q Okay. Now, at that time I asked you this question.

MR. WHITAKER: What page are you on, please?

MR. HART: I'm sorry. Page 17.

At that meeting he didn't tell you that you were in fact insured by Pacific Mutual, did he, and what was your answer?

A Not on the first meeting, no, he did not.

Q And then I asked you, all right. Did you

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meet with Mr. Ruffin again, and what was your answer?

A Yes, I did a few weeks after that. Mr. Ruffin came in and said that.

Q Then I said okay. Now, first of all, who all was there and when did y'all meet, your answer?

A I was individually, he met with me and him.

Q If you could just read your answer, please, ma'am.

A Okay. He just talked to me by myself.



Q Okay. Did he give you any written materials at that time, and what was your answer?

A He brought, he said that Pacific Mutual would not insure us with health, but he brought a schedule, but said that we will place you with another insurance.

Q Can you read the rest of it?

A He brought a schedule to show, and it was from —

Q Then I asked you this question. This may help you, please, ma'am, if I may, Ms. Haslip, I'm going to show you what has been marked as Plaintiff's Exhibit Number 2 to Mr. Ruffin's deposition and ask you if that is not the schedule that he showed you

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that you were just telling me about?

A Okay.

Q Yes, ma'am. Let me find that exhibit.

THE COURT: What is the number on this one?

MR. HART: This is Plaintiff's Exhibit 2 which is in evidence. Is this the schedule that he showed you that day, please, ma'am?

A This is the schedule he showed me with Pacific Mutual on it.

Q Okay. Would you tell the ladies and gentlemen whether it has Union Fidelity written on it?

A Yes, it does. It has Union Fidelity written, I guess, typed in smaller letters under here.

Q Is it typed up here right at the top before this information starts?

A Yes, it is.

Q Then I asked you this question. I said, okay. So this schedule reflects Union Fidelity, is it your recollection that the health policy was going to be written by Union Fidelity. And what is your answer at that time?

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A Okay. I said yes. When he told me that Pacific Mutual could not insure us. Said that we will place you under another insurance and he gave me this to tell me, you know, to show that the insurance was.

Q All right. And then I say, yes, ma'am and you gave me another answer, didn't you? What was it?

A He also told me at the time how much the insurance would be and we agreed that it would be payroll deductible.

Q Okay. Then I asked you this question. All right. So it was your understanding at that time that you would not have health insurance with Pacific Mutual and what was your answer?

A I said not directly with Pacific Mutual.

Q Okay. Sometime after that, Ms. Haslip, you got some things under the Union Fidelity policy, didn't you? Didn't you get a health card from Union Fidelity?

A No, I received, he brought me a blank card out there, with no number or no nothing on it.

(Whereupon, Defendant's Exhibit Number 5 was marked for identification.)

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Q Ms. Haslip, I'm going to show you what's been marked for identification as Defendant's Exhibit 5. Is that a certificate you got from Union Fidelity that you were telling me about?

A No, I did not receive any of this.

Q Are you sure, Ms. Haslip?

A I have not received that. I know you asked me about that in the deposition but I did not receive this.

My husband's name is not Alfred Haslip. I was not employed in '69. My earnings were not \$900.00.

Q Ms. Haslip?

A Yes, sir.

Q Now, at your deposition —

A I know.

Q — when I asked you a question about this case, isn't it true then that you told me that you got that?

A I did not tell you that I received this from Union Fidelity. Now, if I did I was in error.

Q Well, this was Exhibit 3 to Mr. Ruffin's

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deposition.

A Okay.

Q Let's go to your deposition now on Page 19.

A Okay.

Q Okay. Now, I asked you, Ms. Haslip, I'm going to show you Plaintiff's Exhibit 3 to Mr. Ruffin's deposition and ask you if that is not the certificate of insurance you got from Union Fidelity, what is your answer?

A Okay. That this — oh, okay, you say yes.

Q So, your answer was yes then?

A Yes, it was yes then but I did not receive this.

Q Okay. When we took your deposition in 1984 it was closer to all this than it is today, isn't it?

A It was closer to all this than it is today and you were pushing things at me faster than you were today.

Q Now, Ms. Haslip, Mr. Adams was there, wasn't he?

A Yes, sir.

Q He was your lawyer, wasn't he?

A Yes, sir.

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Q Okay. Now, he did a good job there, didn't he?

A Yes, sir, very good job.

Q Okay.

A Well, I don't have this here.

Q And that's not what you told me when I took your deposition though, was it?

A No, it might not have been. If I said yes in there —

Q Is that the truth?

A That is what I said, yes.

Q Okay.

A But I don't have it.

Q If you said yes at your deposition, is that the truth?

A No, my answer should have been no, because I don't have this, I don't have this.

Q Haven't you given that to Mr. Adams?

A Okay. This right here?

Q To use at Mr. Ruffin's deposition?

A Wait a minute, wait a minute. This right here, it seems that I remember something about this, but now all of this other coverage and all this, and

[Page 216 CLEOPATRA HASLIP]

this is my signature, and I told you that then.

Q Okay. You did tell me that then.

A This is wrong.

Q You did tell me that then?

A Uh-huh, this is wrong.

Q Okay.

A All this is wrong.

Q But let's make it clear. In this certificate you got an application.

A Okay.

Q And you signed that application; is that correct?

A Yeah, this is my signature.

Q Okay.

A This is my signature.

Q And, please, ma'am, you got that in the mail from Union Fidelity, didn't you?

A I did not receive this from Union Fidelity. This right here. I have seen this too. This is not, I don't remember whether I saw it when you brought it to my what, but all this right here is wrong.

Q Let me help you a little bit. Didn't you turn that over to Mr. Adams, your lawyer?

A I might have, I just can't recall it.

Q But you did get a health card with Union Fidelity; is that right?

A No, sir, I didn't have a health card to present them at the hospital.

Q You say you didn't get a Union Fidelity health card?

A Unh-unh, he brought me a card out there that did not have anything on it. He told me to fill it out.

Q Okay. Well, did you get a Union Fidelity card?

A I can't remember.

Q Okay. At your deposition did you tell me that you got a Union Fidelity health card?

A Did I?

Q Well, let's look.

A Okay. I said did you get any kind of health card to go along with the Union Fidelity policy, and what did you tell me?

A I said yes, I did.

Q Okay.

A Okay. That was the card that he brought

[Page 218 CLEOPATRA HASLIP]

me.

Q All right. So, after you signed the application that's in that certificate you got the certificate sent to you and the health card, are we together?

A Uh-huh.

Q You will have to answer out.

A Oh, I'm sorry. Yes.

Q Yes?

A I'm not sure.

Q Okay. Let's look at Defendant's Exhibit 5. It's got a table of contents in it, doesn't it?

A Yes, it has.

Q One of the headings is major medical insurance provisions, isn't it?

A Yes.

Q You have to answer out, please, ma'am.

A Oh -- Yes.

Q And -- is has got a schedule in it, doesn't it?

A Yes, it does.

Q And does that list the major medical benefits?

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A Yes, sir, it does.

Q Mr. Sharp earlier today went over some of those with you, didn't he?

A Yes, he did.

MR. HART: Judge, we offer Exhibit 5.

MR. SHARP: What is that now?

MR. HART: It's the certificate.

MR. SHARP: Well, she didn't get it.

THE COURT: It's in evidence.

MR. BLAN: I believe she's testified that she gave it to her lawyer.

THE COURT: It's in evidence.

Q (BY MR. HART:) Ms. Haslip --

THE COURT: Either way, it's in.



Q (BY MR. HART:) Let me show you what I have marked as Defendant's Exhibit 6.

(Whereupon, Defendant's Exhibit Number 6 was marked for identification.)

Q (BY MR. HART:) And is that your signature, please ma'am, on that paper?

A Yes, it is.

Q Okay. Is that an application with Pacific

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Mutual?

A Yes, it is.

Q Okay. What date is it signed?

A 8/19/81.

Q Okay. Now, is there a place up at the top that's got some boxes?

A Yes, it has.

Q About what kind of insurance is being applied for?

A Yes, it has.

Q Okay. And which box is checked?

A Life insurance.

Q Any other boxes checked, up here?

A No, there's not.

Q Okay. And what company's name is at the top of this form?

A Pacific Mutual.

Q Okay. So, this form has Pacific Mutual at the top; is that right?

A That's right.

Q And then it's got a box that says life insurance to check; is that right?

A That's right.

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Q And you signed this?

A Yes, I did.

Q On August the 19th, 1981?

A Yes, I did.

Q Now, let's look back here at Exhibit 5 where it's got this application in here with the Union Fidelity certificate. Now, what is the date that you signed this application?

A August the 19th, 1981. I admit that this is my signature.

Q Okay. I know. They are the same day, aren't they?

A Uh-huh.

Q Okay. Now, on Exhibit 5 this certificate for Union Fidelity, what address does it have for Union Fidelity, would you read that to the jury?

A Certificate of Insurance, Union Fidelity Life Insurance Company, Trevoise, Pennsylvania, 19049.

Q Trevoise, Pennsylvania.

THE COURT: Get to a good stopping place.

MR. HART: I'm about to do that. Where is Exhibit 2?

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THE COURT: That's the proposal.

MR. HART: Yeah, that's the proposal.

Q (BY MR. HART:) So, the Union Fidelity certificate shows Union Fidelity is in Trevoise, Pennsylvania; is that right?

A Yes, it does.

Q Okay. I'm going to show you Plaintiff's Exhibit 2. It has got some Pacific Mutual letterhead at the top, where is Pacific Mutual?

A Newport Beach, California.



Q California.

A 92660.

Q Okay. So, on August the 19th, 1981, when you signed these two applications, your health went up to Union Fidelity in Pennsylvania and your life application went to Pacific Mutual in California, isn't that true?

A No, I thought both of them was going to Pacific Mutual here in Birmingham.

MR HART: This is probably a good place to stop.

THE COURT: Y'll go to lunch and be back at 1:30 in the jury room.

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(Lunch recess.)

MR. HART: The first thing I want to do is I want to offer Defendant's Exhibit 6 which is a Pacific Mutual application.

THE COURT: All right.

**CLEOPATRA HASLIP,**

having been previously duly sworn, resumed the stand and testified further as follows:

**CONTINUED CROSS EXAMINATION**

**BY MR. HART:**

Q Ms. Haslip, this morning we heard Ms. Poindexter testify about a month or so after the health insurance had gone into effect that there had been some employee drop-offs and the insurance was cancelled, did you know about that?

A No, I didn't know that the insurance had been cancelled.

Q Didn't you know that the Union Fidelity policy was going to be cancelled because of the drop-off in employees?

A No, I didn't.

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Q Did Mr. Ruffin come out to Roosevelt City and talk with you about a month or so after the policy was issued and tell you that Union Fidelity coverage was cancelled?

A No, he didn't.

Q I thought this morning you told us that you had some conversations with him about the original insurance was not going to be, the health insurance was not going to be in effect any more and there was going to be some other insurance.

A He told me in December, it was the latter part of December when he told me this, but he did not tell me that we were — he said you are still covered.

Q Right, but he did tell you that who you were covered with before for health was no longer covering you, isn't that right?

A Mr. Ruffin said you are still covered and we are placing you, we have placed you with someone else, but you are still covered.

Q Now, when you sent in the hospital in January of '82 you didn't use the Union Fidelity health card when you were admitted, did you?

[Page 225 CLEOPATRA HASLIP]

A No, I didn't, because I didn't have one.

Q You didn't use it because you didn't think it was any good; is that right?

A I didn't have one.

Q Okay. I thought this morning you told me you did get one?

A No, I didn't tell you I got a Union Fidelity, I told you that Mr. Ruffin brought an insurance card out there and told me to fill it in. He did not even give me a number. I asked him about the insurance.

Q Ms. Haslip, let me refer you to Page 24 of your deposition and that day I asked you this question. Well, did you become aware like in November, December or January that the city was looking for other insurance, health insurance, and what was your answer?

A I said no. The city wasn't looking for other health insurance. Mr. Ruffin himself came to me again and told me that Union Fidelity was cancelling our insurance because we had some drop-offs.

Q Okay. That was before you went in the

[Page 226 CLEOPATRA HASLIP]

hospital in January of '82?

A Yes.

Q Is that right?

A Uh-huh, that was between the time I went to Lloyd Noland and before I went into the hospital in January.

Q Please, ma'am, on Page 46 of your deposition I asked you this question. All right. Had anyone picked up the Union Fidelity health card prior to your going into the hospital in January of 1982, what was your answer, please, ma'am?

A I said I had picked up my health card.

Q Okay. And then you said?

A I said no.

Q I asked you this question, did you still have it in your possession at that time?

A And I said, yes.

Q Okay. I asked you, all right. Had anyone told you

anything as to whether it was still valid or not, and what did you say?

A No, the only thing he told me is that they were changing over to another company and I assume when that — the card wouldn't be valid. That is why

[Page 227 CLEOPATRA HASLIP]

I didn't give them my card when I went into the hospital.

Q Okay. So, you had a Union Fidelity card when you went in the hospital, but you just didn't think it would be any good any more, because Mr. Ruffin had told you that Union Fidelity was cancelling; is that right?

A Yes, he told me that they were placing me with another insurance.

Q After he told you he was placing you with another insurance, I guess the fall of 1981, he didn't tell you he was placing health insurance with Pacific Mutual, did he?

A No, he did not tell me that.

Q After he told you that, you did not sign up for health insurance with Pacific Mutual, did you?

A No, because I signed up with him in the beginning.

Q Okay. And after he told you that Union Fidelity was cancelling, you didn't get a health card from Pacific Mutual, did you?

A No, I didn't.

Q Nor did you get a Pacific Mutual health

[Page 228 CLEOPATRA HASLIP]

certificate book or booklet?

A No, I didn't.

Q It's true, is it not, please, ma'am, from August 19th, 1981, the date of these applications and until you went into the hospital some five months later, January of

1982, you never got any health card from Pacific Mutual?

A No, I didn't.

Q You never got a certificate booklet of health insurance from Pacific Mutual, did you?

A No, I haven't.

Q You never got a policy or policy number for health insurance with Pacific Mutual?

A No, I did not.

Q Ms. Haslip, after August 19, 1981, the date of these applications, had Mr. Ruffin told you that you had health insurance with Pacific Mutual?

A Mr. Ruffin had told us we had health insurance through Pacific Mutual.

Q Please, ma'am, after the date of the application.

A After the date, after the first application?

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[EXCERPT PAGES FROM  
REPORTER'S TRANSCRIPT]

[Page 378 LIONEL WILLIAMS]

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DIRECT EXAMINATION CONTINUED

BY MR. WHITAKER:

Q Mr. Williams, I think we were at the stage where we were approached by Lemmie Ruffin?

Yes, sir.

Q And do you recall approximately when that was, please sir?

A To the best of my knowledge around October or the fall, somewhere in the fall of '81.

Q And did he show you any business card or any forms, how did he introduce himself to you?

A Well, he had a business card, he had a folder, he had printouts with Pacific Mutual.

Q Was the business card similar to this business card that's been marked as Plaintiff's Exhibit Number 1?

A Yes.

Q And was the folder that he handed you a

[Page 379 LIONEL WILLIAMS]

folder similar to the folder that's marked as Plaintiff's Exhibit Number 12?

A Yes.

Q And all the other literature that he gave you, did it have — was it embossed across the top with the name?

A Pacific Mutual.

Q And who were you trying to get insurance for at the



time?

A For my employees.

Q What kind of insurance?

A Health insurance.

Q And did you subsequently buy health insurance through Lemmie Ruffin?

A We bought health insurance.

Q And how did you make your payments for the monthly premiums?

A Well, he indicated —

MR. BLAN: Judge, we —

THE WITNESS: We made them in cash.

MR. BLAN: Judge, we would object on the grounds that's immaterial and irrelevant.

THE COURT: Overruled.

[Page 380 LIONEL WILLIAMS]

MR. BLAN: To the issues of this case.

THE COURT: Overruled.

Q (BY MR. WHITAKER:) Tell me how that came about for him — why didn't you pay in check?

A He wanted — well, we wanted to pay in check for our records, but he indicated to me that he had to consolidate the money in order to send it in and to pay him in cash and that he would consolidate the money and send it into his company.

Q And did he come out on kind of a regular basis, that is, on a monthly basis?

A Yes, he did.

Q And what did he present you with when he came out, if anything?

A Yes, he presented me with a bill on Pacific Mutual stationery and gave it to my manager.

Q And then what would you do?

A Pay it.

Q And he would do that on a monthly basis?

A Yes, that's correct.

Q And how long, Mr. Williams, in your judgment did that go on?

A For approximately nine months, eight or

[Page 381 LIONEL WILLIAMS]

nine months, seven, eight or nine months.

Q And you paid cash for seven, eight or nine months?

A Yes.

Q Did you subsequently have a problem with your insurance with Pacific Mutual?

MR. BLAN: We object to the form of that.

THE COURT: Overruled.

THE WITNESS: Yes, I did. It surfaced when one of the employees covered went to the doctor. He came back livid with me, that I did not —

MR. HART: Object to what the employee may have said, that is hearsay.

THE COURT: Overruled. Go ahead.

MR. WHITAKER: Go ahead.

THE WITNESS: That I had not paid the bill, because the doctor said that the insurance was no good.

Q And had you been paying the bill?

A Absolutely.

Q What did you do?

A I called the office. I called the office here in Birmingham.

[Page 382 LIONEL WILLIAMS]

MR. BLAN: Judge, can we just have a continuing objection?

THE COURT: Yes, sir.

MR. BLAN: To this testimony of Mr. Williams?



THE WITNESS: Mr. Lupia.

Q Lupia?

A Lupia.

Q And what did you tell Mr. Lupia?

A That I had paid for insurance, and no claim was allowed.

Q Did you get any satisfaction out of Mr. Lupia?

MR. BLAN: Object to the form.

THE COURT: Overruled.

THE WITNESS: I did not.

Q Did you get directed to some other person to call?

A No, not by him. I found on my own where the company was in California. I called the company in California.

Q Did you register the same complaint with the people in California?

[Page 383 LIONEL WILLIAMS]

A I did.

Q Did you get any satisfaction out of them?

A I did not.

MR. BLAN: Object to the form.

THE COURT: Overruled.

Q Who did you call next?

A I called back to the home office here in Birmingham.

Q Who did you speak with then, do you recall?

A The same person, Mr. Lupia.

Q Did you get any satisfaction out of him?

MR. BLAN: Object to the form.

THE COURT: Overruled.

THE WITNESS: No.

Q Then what did you do?

A We consolidated our —

Q Did you call California any other time?

A I called them, and then I went to search for Mr. Ruffin to see if I could get an explanation as to why the money was not —

Q How many times, in your judgment, Mr. Williams, did you call Pacific Mutual's office in Newport Beach, California, about this problem?

[Page 384 LIONEL WILLIAMS]

A During that time it could have been as many as five times, because when I talked to them one day they referred me back. I called them back to let them know that I could not get satisfaction here. So, it could have been as many as three or four times.

Q Were your hospital bills or the hospital bills of your employee for which you paid premiums ever satisfied?

MR. BLAN: We object to that, if Your Honor please. He cannot go into detail of anything in the way of damages. We object to it that it's incompetent.

THE COURT: I think he can show what, if they want to go into that, they can. Then you can come back with your examination.

Q (BY MR. WHITAKER:) Were your complaints, Mr. Williams, to Patrick Lupia and to the people in California, that you had paid your premiums and now you found out that you didn't have any insurance? Is that the essential of your complaint?

MR. BLAN: Object to the form of that, that's not what the man has testified to.

[Page 385 LIONEL WILLIAMS]

THE COURT: Overruled.

THE WITNESS: Yes, sir.

MR. WHITAKER: That's all I have got. Thank you, Mr. Williams.

MR. BLAN: Judge, we move to exclude his testimony on the basis that it is not similar in time to the matter of the claim that was made in this case. No claim in this case has been made against Pacific Mutual and has not shown the basis of the denial of the claim. Has not shown anything similar to what was presented and what claimed in this case. We think it is highly irrelevant and immaterial, and it comes subsequent to the events that took place in this case. We move to exclude the testimony.

MR. HART: Judge, we would ask for limited instructions again be considered on the issue of notice prior to the Roosevelt City situation.

THE COURT: Notice to the company in California, this testimony is not for that purpose, because it does come subsequent to the events in this case. But you can receive this to determine any intent of Mr. Ruffin and his course of conduct. Go ahead.

[Page 386 LIONEL WILLIAMS]

THE COURT: Overruled.

THE WITNESS: Yes, sir.

\* \* \* \*

[EXCERPT PAGES FROM  
REPORTER'S TRANSCRIPT]

[Page 392 Deposition Testimony of RALPH PASSMAN]

Q (BY MR. WHITAKER:) Identify Plaintiff's

[Page 393 RALPH PASSMAN]

Exhibit 36 first for me.

A Exhibit Number 36 is a request with a notation on it to our office that per the conversation that Pat Lupia had with my brother, Herb, to change the billing only address for this case to our Pat Lupia address, received by our office on October the 23rd, 1981.

MR. BLAN: I move to exclude it on the grounds it refers to a conversation between somebody else other than the person who's testifying.

THE COURT: All right. Overruled. Go ahead.

Q (BY MR. WHITAKER:) Well, would you please indicate for me, if you would, the notation in the upper right-hand corner of Plaintiff's Exhibit Number 36?

A The notation reads, Herb, per our conversation, please change the billing only address for this case to our address, Pat Lupia.

Q And can you identify the writing on this Plaintiff's Exhibit — we need to identify this, Charlie.

MR. SHARP: I want to offer them but I

[Page 394 RALPH PASSMAN]

don't want to show them to them until you read it out.

MR. WHITAKER: We already did. I thought that I'd have them identified.

MR. BLAN: I thought they were already in.

MR. SHARP: If they're already in there's no objection on my part. I didn't think they were already in.

MR. BLAN: I think they are already in, Judge, but if they're not I would object to them again. They pertain to documents that are hearsay to my client.

THE COURT: All right. Overruled.<sup>6</sup>

Q (BY MR. WHITAKER:) And would the billing only address be the address to which you would have sent the termination notices?

A That is correct.

Q That is how you handle it in the normal course of your business, is it not? That is that termination notices are sent to the billing address?

A That is correct.

Q And this address on Plaintiff's Exhibit Number 33, City of Roosevelt, care of Pat Lupia, 530

[Page 395 RALPH PASSMAN]

Beacon Parkway West, Number 400, Birmingham, Alabama, 35209, that is the billing address?

A That is the billing address, that is correct.

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[EXCERPT PAGES FROM  
REPORTER'S TRANSCRIPT]

[Page 452 Deposition Testimony of LEMMIE RUFFIN]

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Q All the people at Roosevelt City — a check was written and sent to you, and whatever happened to the money after that was up to you and your company?

A Yes, that is correct.

Q That time, money was sent to you directly or checks made payable to you directly?

A On a couple of occasions.

Q Did you have different accounts for Union Fidelity and Pacific Mutual?

A No, I didn't.

Q Did you put all the money into one account?

A Yes, I did.

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[Page 453 LEMMIE RUFFIN]

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Q At any time that you sold insurance, were you ever acting in a capacity other than as a representative of Pacific Mutual Insurance Company?

A No.

\*\*\*\*\*

[Page 454 LEMMIE RUFFIN]

Q As far as you can recall, that was the capacity that you represented yourself to the people at Roosevelt City, as an agent of Pacific Mutual Company?

A Yes.

\*\*\*\*\*



[Page 462 LEMMIE RUFFIN]

\*\*\*\*\*

ever got contacted by me, you were told by Mrs. Poin-dexter that they were not supposed to accept the refunds?

A That is exactly right.

Q Do you know what ultimate disposition was made of those funds?

A Always under my control

Q So you ultimately took the funds —

Q You say those funds that you attempted to reimburse, but were not allowed to, were always under your control?

A They are still in the bank.

Q What bank is that?

A Right now, they are in Metro.

Q What kind of account is it in?

A Savings account.

Q What is the name on that account?

A It is in my wife's name.

Q What you are saying, the funds that were to be reimbursed to the employees of Roosevelt City have now been placed in a savings account in your wife's name?

A That is correct.

[Page 464 LEMMIE RUFFIN]

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Q How long do you say it was after Union Fidelity cancelled the insurance that my clients continued to make payments to you?

A I don't think they did that but once or twice.

Q One or two months' premiums?

A Right.

Q And that would have been as a result of the bill you

would have sent and told them to remit that amount?

A Yes.

[Page 465 LEMMIE RUFFIN]

Q That would have been at your instructions?

A Yes.

Q And during this period of time that this was going on, you were still operating out of the Pacific Mutual Office?

A Yes.

Q Your correspondence and communication with my clients would come to them by way of Pacific Mutual letterheads?

A That is correct.

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[Page 477 LEMMIE RUFFIN]

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Q Do you recall, in fact, how you introduced yourself when you went out to make proposals?

A Yeah, I do. I would introduce myself as Lemmie Ruffin with Pacific Mutual, and, of course, I would talk about some of the history of the company.

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**[EXCERPT PAGES FROM  
REPORTER'S TRANSCRIPT]**

[Page 497 Direct Examination of DEBORAH AULT]

\*\*\*\*\*

Q I asked you questions, and I'll ask you again because I don't know exactly what the record says. You were the receptionist as well as some other duties and you answered the phone over there at Pacific Mutual?

A Yes, sir.

Q Did you receive some complaints from some policyholders that had been sold by Mr. Lemmie Ruffin?

A Yes, sir.

\*\*\*\*\*

[Page 499 DEBORAH AULT]

\*\*\*\*\*

Q (BY MR. SHARP:) And what type of information would they give you over the phone?

A They would tell me that they had purchased insurance with our company through Lemmie Ruffin and then when they had submitted a claim, they had been in the hospital or seen a doctor and they were informed that they did not have insurance with us.

Q And what would you do with that information?

THE COURT: Now, ladies and gentlemen, this evidence is not received for the truth of it. I mean the fact that some complaint was made does not mean it is true. That is not what this is offered for.

[Page 500 DEBORAH AULT]

This information, this testimony is offered if believed by you for any information on questions of notice to the

defendant Pacific Mutual Insurance Company. Not whether information received was in fact true. Go ahead.

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[Page 501 DEBORAH AULT]

\*\*\*\*\*

Q What would you do with the complaints that came in, would you write down some information about them?

A Yes, sir, I'd write down the name of the person calling and who they worked for and the agent's name and how we could get back in touch with them.

Q And the agent's name that we're talking about now is?

A Lemmie Ruffin.

Q And after taking down information, what would you do with the information?

A Take it to Mr. Lupia.

Q Who was he?

A Agency manager.

Q And beginning in November of 1980, what was the frequency of the calls.

A Two or three times a week.

Q And for how long did that continue two or

[Page 502 DEBORAH AULT]

three times a week?

A Approximately, I don't know, eight or nine months.

Q When you would give this information to Mr. Lupia, would he make a statement to you?

A Yes, he would tell me that he would talk with Lemmie about it and they would take care of the problem.

\*\*\*\*\*

[Page 523 DEBORAH AULT]

\* \* \* \*

Q And after you had recorded all these phone calls and everything to your boss, did he remain in the employment?

A Yes, he did.

Q He was never terminated as long as you were there?

A Yes, sir.

[Page 526 DEBORAH AULT]

\* \* \* \*

Q Was it against the policy of the office for an agent to have a check made out to him individually?

A Yes, it was.

MR. BLAN: Object to the form of the question. I also object as it's irrelevant and immaterial in this case.

THE COURT: Overruled.

Q (BY MR. SHARP:) Do you know any instances

[Page 527 DEBORAH AULT]

where any complaints were coming in that Mr. Ruffin had accepted either cash or checks made out to him personally or his company?

A There were not any complaints called in to me, but he did bring me checks.

MR. BLAN: I object to it because it's non-responsive.

Q (BY MR. SHARP:) Well, did he bring you checks made out to him?

A Yes, he did.

Q And did you inform him that that was against the policy of the office?

A Yes, sir.

Q Did you tell Mr. Lupia that he was doing that?

A Yes, I did.

Q Did he ever change doing that or did he continue to violate that procedure?

MR. BLAN: I object to the form.

THE COURT: Did he continue to do that or did he stop?

THE WITNESS: He continued.

MR. SHARP: I have no further questions.

[Page 528 DEBORAH AULT]

### RECROSS EXAMINATION

BY MR. BLAN:

Q You told Mr. Lupia that, didn't you, and didn't Mr. Lupia then come back to you and say that he had talked with Mr. Ruffin and told him not to do that any more?

A Yes, he did.

THE COURT: Anything else?

MR. SHARP: Did the same thing happen again? And he kept on again and you went through the same process?

A Yes, sir.

### REDIRECT EXAMINATION

BY MR. SHARP:

Q How many times did you go through that same process?

A There were several.

\* \* \* \*

**[EXCERPT PAGES FROM  
REPORTER'S TRANSCRIPT]**

[Page 614 Direct Examination of RONALD GIASER]

\*\*\*\*\*

Q Now, I want to show you what's been marked as Plaintiff's Exhibit Number 14 and I think you've previously seen that, have you not?

A I have seen that, yes, sir.

Q Now, I want to represent to you that that has been previously testified that this was a letter sent or a notation made by Patrick Lupia to Ralph Passman at Passman & Associates to change the billing only address from this case to our address, do you understand what I'm saying?

A Yes, I do.

Q And if I represent to you that what happened in this case as represented by this document

[Page 615 RONALD GIASER]

and Plaintiff's Exhibit Number 16 is that the late notice instead of going to the City of Roosevelt went to the general agent, Mr. Patrick Lupia, do you find fault in that as an expert in the insurance industry?

MR. BLAN: I object to the form of the question as to whether he's qualified for that.

THE COURT: Overruled.

THE WITNESS: That is not standard for the insurance industry.

Q Why?

A Because it eliminates the necessary checks and balances that all insurance policies inherently must have. The owner of the policy is the City and/or the insured. In this particular case, this individual introduced himself

into a situation whereby the insurer or the insuror were no longer in direct relationship to each other.

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[Page 617 RONALD GIASER]

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Q Are the, you say the persistency ratings

[Page 618 RONALD GIASER]

that are looked at by not only — well, did you look at the persistency ratings of the agents that worked with you?

A Every month, yes, sir.

Q And in the industry is it a common practice for those persistency ratings to go to the home office and/or to the regional office?

A They come from the home office.

Q And what's the standard in the industry for reviewing those persistency ratings?

A That's the most important measure of performance that an insurance company has.

Q Besides the persistency rating, let me ask you this question.

Are those persistency ratings generated by computers?

A Sure.

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[Page 619 RONALD GIASER]

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Q Besides a, I'm asking this question as standard in the industry, besides the persistency rating as a tool by which you check an agent's progress are there other



ways in the industry to check their progress or their status by way of computer check, do you understand my question?

A I understand your question, but the most obvious method would be to check and see if there were a lot of commission charge backs, those also are generated internally, to see if this individual, for example, if he's been advanced commission, when he writes a case, the type of financing that is used for agents, one of the methods of financing is to advance

[Page 620 RONALD GIASER]

commissions which I believe they did in this case and so they would have a knowledge of how much they paid him and how much gone off the books so therefore he would have a debit balance sitting there, they would know that.

Q Let me see if I understand that. If you sell an insurance policy and you get one month's premium in and it's a semi-annualized commission basis, then you as the agent would get your percentage of your first year's commission right away; is that right?

A Correct, that's one method.

Q But really you would get more than what the premium that the company brought in for that first month, wouldn't you?

A Why certainly.

Q Generally?

A You'd get most of the year's commission, not all of it but you get most of it immediately.

Q So then you sell me a policy and I cancel it after one or three months, then all that commission that was paid to you, there's some that you are entitled to, right?

[Page 621 RONALD GIASER]

A That's right.

Q And then the computer kicks that out and the people at the home office and the people locally know about it, right?

A Well, of course they know about it.

Q And that's another way that you keep check on the progress and how somebody, an agent, is doing in the field?

A Correct.

Q Keeping the policy in force?

A Correct.

Q Ron, I'm sorry, Mr. Giaser, are you familiar with the standard in the industry for checking up on agents who are not keeping policies in force, that is, have a poor persistency rating?

A How they would be checked up?

Q What is the —

A Certainly.

Q What is the general practice in the industry for checking up on that?

A Okay. That is a superintendent would look at persistency reports, he would get in touch with the manager and he'd ask the manager to give a

[Page 622 RONALD GIASER]

detailed explanation of what is occurring with this particular agent and why he is being retained or what actions are being done to alleviate this persistency problem, the insurance company doesn't make any money unless the policy stays in force.

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[Page 648 RONALD GIASER]

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Q Do you think he was succeeding at that point?

A No, sir, this man was not — he did not succeed from the very first month. His losses were

[Page 649 RONALD GIASER]

astronomical.

Q So, you're telling this jury, Mr. Giaser, the person that made \$15,250 was not succeeding in the insurance industry?

A Sir, he was not making —

Q Is that what you're telling the jury?

A — \$15,200 in my way of thinking. He was being advanced money against policies that were lapsing, and there was a large disparity between what he was actually earning and what he was being paid.

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**[EXCERPT PAGES FROM  
REPORTER'S TRANSCRIPT]**

[Page 723 Deposition Testimony of PATRICK LUPIA]

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Q Was a Pacific Mutual agent authorized to use the letterhead stationery of Pacific Mutual to submit billing estimates to an insured such as the City of Roosevelt City:

[Page 724 PATRICK LUPIA]

A We would not have prepared those. There would be no stated policy that would say you are or you are not permitted to do it. It is — I mean, it is against the law. You're not allowed to do that.

Q That is what I am asking. Does the agent have a right to prepare a premium statement or a billing statement to a city or to a group insured?

A No. Does not.

Q Did you have any knowledge that these may have been submitted to the City of Roosevelt City either by Lemmie Ruffin or by anybody else?

A No.

Q Have you ever seen those before today?

A Not until the last couple of days.

Q In 1980 and 1981, did Lemmie Ruffin have any authority or permission from you to collect premium checks from the City of Roosevelt City or any other insured payable to him?

A Payable to him?

Q Yes, sir.

A No, that is against the law.

Q Was Lemmie Ruffin ever instructed by you not to accept premium check from any insured payable

[Page 725 PATRICK LUPIA]

\* \* \* \*

to him?

A No, we never talked about it.

Q Is that contained in any of the training material or instruction material or anything that Lemmie Ruffin would have?

A I think it is also on page one of the license that he had to say that he has not done that.

Q Did you have any knowledge that Lemmie Ruffin may have accepted checks from anybody in payment of premiums, such checks being made payable to him individually?

A No.

Q All right. When Lemmie Ruffin was being recruited as an agent, did you talk with him?

A Yes.

Q On more than one occasion?

A Yes.

Q Did you discuss with him about what monies he would need in order to pay his expenses?

A In relation to the form that is in there, yes.

Q And did you have some discussion with him that he — his income from Pacific Mutual would only be based on commissions on policies that he sold?

[Page 726 PATRICK LUPIA]

A He understood that.

Q Did you discuss that with him?

A Yes, he knew he was on straight commission if that is the question.

Q Was he told that?

A Yes.

Q Now, after he came or after he was licensed as an

agent of Pacific Mutual, did you furnish to him any books or other materials in the nature of training materials?

A Yes.

Q And what are those, please, sir?

A The ones that come to mind are the R&R courses that we used, which were advanced training in the area of business insurance, group insurance, basic planning, things like that.

Q Are those materials that are furnished by the Research and Development Institute?

A Yes.

Q Is that an industry-wide organization?

A Yes.

Q And do they put out courses or books on various subjects of interest to insurance agents?

[Page 727 PATRICK LUPIA]

A And all industries.

Q And were those books and materials furnished to Lemmie Ruffin while he was an agent with Pacific Mutual?

A Yes.

Q What procedure did you go through in furnishing those to him?

A When we put together a group of class of people that we were going to have in this thing that I would end up teaching, you would notify Warren Young, give him the names of the people that were going to be involved, and then he in turn would ship to you the books, poackages, [sic] all cellophane strapped. He would then contract with R&R direct for a grading service specifically in the name of each person that was going to be in that class. And he was charged accordingly.

Then I would conduct the classes. They would fill out their — their test materials and their reecap [sic] sheets of what they did or didn't learn in the thing, mail them off directly to R&R, and they would be returned graded to them. And then in turn Warren Young would have been notified they did or

[Page 728 PATRICK LUPIA]

didn't complete the course.

Q During the time that you were agency manager there in Birmingham, do you specifically remember that Lemmie Ruffin took some of those courses?

A Oh, he was in — he was in, to the best of my knowledge, in all of them.

Q All right. Did Lemmie Ruffin come into the office there in Birmingham on a regular basis?

A As regular as anybody.

Q All right. Now, during the time that he was there, and specifically during 1981 and '82, did you see him on a frequent basis?

A Yes.

Q How often would you say that you saw him?

A Every couple of days, two or three times a week.

Q Did you talk to him?

A Whenever he came in the office, we always talked.

Q Did he have questions from time to time?

A Lemmie — Lemmie would have questions about getting things down. Lemmie very seldom was interested in spending lots of time just shooting the

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breeze. He was pretty busy. He was always working.

Q Did he from time to time ask you questions about things that he had — that he had discovered or come across in his business as an insurance salesman?

A How to? He was more inclined to call me.

Q Did you try to answer those questions?

A Whenever he asked.

Q Did he from time to time talk to you about problems that he might have had in selling or anything of that nature?

A He thought that was my job.

Q And did you talk to him on that basis?

A Yes.

Q And did this go on the entire time that he was an agent there in Birmingham?

A That was the relationship that I had with him.

Q In 1980 was there any formal training program required by Pacific Mutual for an experienced agent?

A No.

Q And was Lemmie Ruffin, when he was licensed by Pacific Mutual, an experienced agent?

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A Yes.

Q What does that mean?

A That he was an experienced agent? That he could not be hired as an inexperienced agent, which means that he did not qualify for financing. He had been in the business more than two years.

Q He had been —

A In the business more than two years.

Q Did you have any knowledge back in 1980 or '81 that Lemmie Ruffin may have been sending out premium statements or billing statements to the City of Roosevelt City?

A No.



Q Did you have any knowledge that Lemmie Ruffin may have been collecting premiums from the City of Roosevelt City by checks made payable to him individually?

A No.

Q Did you ever have any knowledge that Lemmie Ruffin may have been collecting premiums from either the City of Roosevelt City or some other insured and not sending them in to the insurance company?

A He — no. No.

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Q Did you ever hear of that?

A No.

Q Did you ever have anybody call you or write you or hear anything to that effect while you were agency manager?

A To the best of my knowledge, no.

Q In 1981 or '82 did you have any relationship with John Alden Insurance Company?

A No.

Q Are you familiar with what is called a list billing?

A Yes.

Q And would you tell us what that is, please, sir.

A It is a facility that Pacific Mutual and a number of insurance companies offer, more often for business insurance than individuals, where they have a minimum number of policies so that they can send one billing statement. Normally it is also to facilitate payroll deduction and the remittance can be done on one check from that entity.

Q In 1981 was Pacific Mutual billing some insureds by list billings?

A At all — anywhere?

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Q Yes, sir.

A Oh, yes. Yeah.

Q And did you have a procedure there in the Birmingham office for list billings?

A Yes.

Q Tell us what that was.

A It was the Pacific Mutual policy, it was not ours.

Q All right. What was that?

A The billing statements were sent from Pacific Mutual to the agency. I do not recall whether it was four or five parts. But they are sent to the agency. Two were sent to the company, one was given to the agent to let him know that the billing statement was in. The two statements that went to the company, they would mark up one as to who was still on the sheet or who wasn't, recalculate the new premium, put it on the bottom, and return that along with their check to the agency and retain the other one for themselves.

Q All right. Now, when you talk about —

A The employer or whatever.

Q The employer?

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A Yes.

Q And if you assume — assume if you would that the City of Roosevelt City was put on a list billing arrangement for the policies of life insurance that Lemmie Ruffin was instrumental in selling to employees of Roosevelt City, would that list billing have come from the home office in Newport Beach or Pacific Mutual to your agency in Birmingham?

A If it was a Pacific Mutual list billing, yes.



Q And then as I understand it, two copies would have been sent by your agency to the City of Roosevelt?

A Right, by the person in charge of the list billing.

Q Did you have somebody in your office that was handling that?

A That was one of the functions of one of the girls, yes.

Q Mr. Lupia, I am going to show you what was marked as Plaintiff's Exhibit 12 to the deposition of Mr. Young and Ms. Brown and Mr. Flessas. This is the

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policy file of Eddie Hargrove.

A Okay.

Q And this is for a policy of life insurance issued to him by Pacific Mutual.

A Uh-huh, yes.

Q Now, I want to draw your attention to a page in this exhibit that has got a list of, I believe, ten names on it with some figures. And up here at the top, although this is partly cut off, it is addressed to the City of Roosevelt City.

Now, do you recognize that document?

MR. BLAN: This is the document that I am referring to right here, Defendant's Exhibit 21 on the file of Eddie Hargrove.

A For list billing, yes.

Q Now, is this the thing that we have just been talking about?

A Yes.

Q As far as a list billing?

A That is it.

Q And can you tell by looking at this what copy of a list billing this is?

A No. Based on what I see, it appears to be

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the one coming back from the City of Roosevelt, but that is only because the things are scratched out.

Q During the time that you were agency manager in Birmingham, did any complaint from any policyholder come to you about Lemmie Ruffin to the effect that he may have made misstatements concerning coverage of any policies?

A No.

Q Did any complaints come to you during that time about Lemmie Ruffin concerning any collection of premiums on any policies?

A No.

Q I believe the agency in Birmingham was closed about July of 1982; was it not?

A I am not sure of the date.

Q Was Lemmie Ruffin terminated as an agent for Pacific Mutual at or about the same time the agency was closed?

A I don't think so. I think that each agent that was still there that lived in Birmingham — because the decision had been made for me to leave. I mean I was going. That those who still lived in the community who wanted to be agents were given the

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\* \* \* \*

Q Did the — was all of the correspondence related to the Union Fidelity policy that you wrote generated out of the Pacific Mutual office in Birmingham?

A My personal business?

Q Policies that you wrote for Union Fidelity; is that correct?

A Yes, I believe they were.

Q And all of the correspondence that you received would have been received at the Pacific Mutual office?

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A At the office, that's correct.

Q Would all of the policies and would all of the phone calls that you received with regard to Union Fidelity policies be received at the Pacific Mutual office?

A They would have had to have been.

Q And would all of the phone calls or most of the phone calls that you made with regard to Union Fidelity policies be made from the Pacific Mutual office?

A Probably.

Q Would it be true, Mr. Lupia, that all of the activities with regard to Union Fidelity policies that you were involved with were either generated from or came to the Pacific Mutual office?

A Yes. I would say that is true.

\* \* \* \*

**[EXCERPT PAGES FROM  
REPORTER'S TRANSCRIPT]**

[Page 782 PACIFIC MUTUAL'S MOTION FOR  
DIRECTED VERDICT]

\* \* \* \*

THE COURT: All right. Now we get down to — or are we through?

MR. SHARP: Fraud is the only claim in the case?

MR. WHITAKER: Probably. I've got my jury instructions, that would probably cut out just number 17 of the instructions.

THE COURT: All right.

MR. HART: Two more points in respect to the motion —

THE COURT: Well, I've already let the jury go to lunch. Go ahead.

MR. BLAN: What are you doing?

MR. HART: I'm just going to finish up with the motion. We had a couple more grounds.

THE COURT: Go ahead.

MR. HART: One, we say we ought to get a directed verdict on punitive damages and that claim against Pacific Mutual, there's been no evidence of fraudulent attempt made to Pacific Mutual. There's no evidence that authorizes these particular acts and knew of the ratify governing the form and fashion and that it would be unconstitutional to hold them

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vicariously liable for punitive damages under these circumstances.

Judge, we have also itemized in our motion for directed verdict other constitutional challenges through the submission of punitive damages and the award of punitive damages in this case.

THE COURT: All for the plaintiff.

MR. HART: Well, they're based constitutional grounds such as the standard of —

THE COURT: Oh, yeah.

MR. HART: We've outlined it in there, previous self-incrimination, there's no constitutional safeguard, they ought to have to find punitive damages beyond a reasonable doubt standard and the other grounds that we've itemized.

THE COURT: That's a reasonable argument but it's just not the law in Alabama right now.

Anything else?

MR. HART: That's it.

THE COURT: Do you want to say anything in 25 words or less?

MR. WHITAKER: No, Your Honor.

THE COURT: All right. I just want to tell

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[EXCERPT PAGES FROM  
REPORTER'S TRANSCRIPT]

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\* \* \* \*

Alabama as it pertains to this case. That I am about to give you. You take the law as I'm about to give you. You apply it to those facts that you determine and from that you arrive at the verdict.

Now, there are four plaintiffs in this case, and I don't know that I can call them all by memory, Cleopatra Haslip, Cynthia Craig, Alma Calhoun, and Eddie Hargrove. They all filed a lawsuit and they're all joined in this case, to be heard by one jury. So, you have got four verdicts in this case, there will be four verdicts. These plaintiffs — they sue two separate defendants.

They sue an individual by the name of Lemmie Ruffin. Now, Mr. Ruffin is not here. You have not seen nor heard from him. And you can take that into consideration in determining your verdict, against or in favor of him. It shouldn't be controlling.

The burden of proof is on the plaintiffs, all four of them to reasonably satisfy you from the evidence that they are entities. That their contentions are correct that they're entitled to a verdict. In other words the plaintiffs must from

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the evidence reasonably satisfy each of you of the correctness of their contentions. That is that they should prevail against one or both of the defendants. And



failing in that burden of proof the defendant should — you should be in favor of the defendants.

The lawsuits are against Lemmie Ruffin and there is mention of doing business as L. L. Ruffin Insurance Agency, and that is of course Lemmie Ruffin. So, actually it's a lawsuit against him, and as I have said he is not here.

The lawsuit is also against Pacific Mutual Life Insurance Company, which is a corporation. It is the contention of the plaintiffs that Mr. Ruffin was acting as an agent of that corporation, Pacific Mutual Life Insurance Company. While acting within the line and scope of his employment for that particular defendant he perpetrated a fraud upon these particular plaintiffs.

So, the allegations of the four plaintiffs against the two defendants is one of fraud. Now, what is fraud in the state of Alabama? What do the plaintiffs have to prove in this case to reasonably satisfy you that a fraud has been perpetrated upon

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them?

Fraud in the state of Alabama is this: It is the representation of a material fact as truth, that is a representation either by words or act, that that particular fact is true. Second, that representation of that fact as true must in fact be not true, that is the defendant represents a fact to be true when in fact it is not true. The defendant must have known at the time he made that representation that that fact was not true or he should have known that it was not true. That is, he makes a representation that a certain fact is true and it's really untrue and he knows it or should have known it.

The plaintiffs did not know it was untrue, in other words they thought it was true, they relied upon the representation of the person making that representation. That is, they thought that it was true and in fact relied upon that representation as true even though it was untrue. And that representation that is relied on by the plaintiffs caused injury or damage.

Now, let me go over that again. Because

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you are hearing that for the first time, let me go over it again and I am going to try to explain it where you can understand it. Fraud in the state of Alabama is the representation by a defendant of a fact which is true. That is the defendant represents a certain fact to be true, when in fact that fact is untrue. The defendant making that representation knows that it is untrue when he makes the representation or he should have known that it was untrue. The plaintiffs think that it is true and rely upon that representation, that it's true, even though unbeknownst [*sic*] to them it's untrue. That is they rely on it, that is a reasonable person acting in their place would have relied upon the representation to be true. If they are acting reasonable then they have a right to rely on a representation. If they're acting reasonably, I'm talking about the plaintiffs, and based on that reliance they are damaged or as a direct result of that misrepresentation and their reliance upon it they are in fact damaged.

So, those are the four or five elements. You can combine them but those are the elements of fraud. Representation by the defendants of the fact



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to be true when in fact it is untrue. The defendant knows it is untrue or should have know it was untrue. The plaintiff relies upon it, acting reasonably they rely upon it, and they are damaged. So, if you are reasonably satisfied from the evidence of those elements that were committed by a person named in this case then it would be your duty to find that a fraud was perpetrated or committed upon the plaintiffs.

Now, as to Lemmie Ruffin he is an individual. In order to find him guilty of fraud you must find from the evidence that Lemmie Ruffin made a representation either by words or acts that a fact was true. Lemmie Ruffin knew it was not true or should have known it was not true. The plaintiffs each of them, each separate case, look at the cases differently. Whichever plaintiff's case you're talking about, that particular plaintiff must have not known it was untrue or thought it was true, relied upon the representation as true and was thereby damaged. And if you are reasonably satisfied from the evidence that Lemmie Ruffin is guilty of those acts that is all or those elements are true as they

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apply to him as an individual then you should find him guilty of fraud, I use the word guilty I should — that sounds like a criminal, that's not what I am talking about. You should find him liable in damages for fraud.

Now, Pacific Mutual. Pacific Mutual is not an individual, Pacific Mutual Life Insurance Company is a corporation. Now, the allegations in this complaint by the separate plaintiffs is that Lemmie Ruffin committed the fraud. I told you what you have to find in order to

find that and that Pacific Mutual Life Insurance Company is responsible for Lemmie Ruffin's fraud, because Lemmie Ruffin was the agent of Pacific Mutual.

Now these are allegations. Now, I am not telling you that these are allegations of the plaintiff. Lemmie Ruffin was the agent of Pacific Mutual Life Insurance Company. While he perpetrated this fraud upon the plaintiffs acting within the line and scope of his authority and as a direct result of that the plaintiffs were injured. Thereby Pacific Mutual Life Insurance Company should be responsible in damages.

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Now, what's the law in that regard?

Well, first of all what is an agent?

The allegations is that Lemmie Ruffin was the agent of Pacific Mutual Life Insurance Company. The law of Alabama is, and I'm going to read some of it, an agent is a person who by agreement with another, called the principal, here the allegation is Lemmie Ruffini is the agent, Pacific Mutual is the principal. An agent is a person who by agreement with another, called the principal, acts for the principal and is subject to its control.

When an agent is engaged to perform a certain service, that is the principal engages a person to perform a service for them under their control. When an agent is engaged to perform a certain service whatever he does to that end or in furtherance of his employment, is deemed to be an act done within the scope of his employment or within the line and scope of his employment. So, if he is engaged to perform a certain act under the control of the principal whatever he does in furtherance of that

employment or in furtherance of that purpose is deemed to be an act done within the line and scope of

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his employment.

You will hear the term line and scope of his employment a few more times. So, that is what we are talking about, that is any act of which the agent does, in this case the allegations Lemmie Ruffin does, in furtherance of that is the allegation, is Pacific Mutual engaged him to sell life insurance. Any act that he performs in furtherance of that deemed purpose is deemed to be an act done within the line and scope of his employment.

Now, is the principal liable for the fraud of its agent? If you find that Lemmie Ruffin was guilty of fraud, is Pacific Mutual liable for that? There is a law in regard to that.

The principal is liable for the fraud of his agent acting within the actual or apparent scope of his employment even though the fraud was committed solely for the agent's own benefit and to the principals. That is, if he is acting within the line and scope of his employment as the agent of Pacific Mutual and commits fraud Pacific Mutual is responsible for the acts or for the fraud of its agent done within the line and scope of his

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employment. Even though that fraud was committed solely for the benefit of the agent, Lemmie Ruffin, and to the detriment of his principal Pacific Mutual.

In other words, the principal is responsible for its agent's fraud or misrepresentation. Even though the

principal may have personally received no benefits from it, and it is of consequences that the agent acts entirely for his own purposes and commits a fraud solely for his own benefit, if it is within the line and scope of his employment. Which means Pacific Mutual is only responsible for the fraud of Lemmie Ruffin which he committed acting as their agent within the line and scope of his employment with Pacific Mutual.

Now, implied authority of an agent is authority to do whatever act or use whatever means are reasonably necessary and proper to the accomplishments of the purposes for which the agency was created. That is he would have implied authority to do whatever was necessary, reasonably necessary, and proper for the accomplishment of his goal, which was to sell insurance. Apparent authority for which a principal is responsible to a third person for the

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act of his agent. [sic] that is the principal is responsible to that third person, which would be the plaintiffs in this case, for the acts of his agent, Lemmie Ruffin. Is that authority which arises when the principal by his acts, word or conduct reasonably interpreted causes such third person to believe that authority has been given to an agent to act on his behalf and such authority cannot be established solely by the acts of the agent. That is the principal must close that principal rule with certain authority which to the reasonable person would give that impression that that person was acting on behalf of that particular principal.

Now, the agency is suspended, that is it is cut off during the time of the abandonment by the agent of the principal's business. In other words, ladies and



gentlemen, if during this course of conduct Lemmie Ruffin ceases to be the agent of Pacific Mutual, is no longer their agent, but is working and that is its reasonably from the circumstances, that is interpreted as that. That is he had abandoned Pacific Mutual as his principal and has taken on another principal, another insurance

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company, that has been mentioned in this, and commits a fraud while acting on behalf of the other insurance company, not Pacific Mutual, he has abandoned Pacific Mutual, and to the reasonable person it is apparent that he has abandoned Pacific Mutual, then Pacific Mutual is not liable for the acts of Lemmie Ruffin committed while he was acting without the line and scope of his employment of Pacific Mutual. That is he is acting on behalf of someone else.

Simply put, Pacific Mutual Life Insurance Company is responsible for the acts of Lemmie Ruffin which he committed as an agent of Pacific Mutual, acting within the line and scope of his authority as the agent of Pacific Mutual. So, that is if he was acting as a Pacific Mutual agent — even though he committed fraud which was against the directions of his principals they're responsible for those acts. If at the same time he perpetrated those acts he was acting as Pacific Mutual Life Insurance Company's agent, and it was reasonably apparent to the public that he was in fact acting as their — if in fact he had abandoned that relationship, the agency principal, the agent relationship between Pacific

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Mutual and himself, and it was reasonably apparent to

everyone that he was acting on behalf of another, then Pacific Mutual cannot be held responsible for his acts committed as an agent or within the line and scope of employment of someone else, another insurance agency, and I can't call their names right now, but you have heard them, you remember, Union Fidelity and John Alden, I think were the names.

So, you must be reasonably satisfied, in order to find Pacific Mutual liable for fraud to these plaintiffs you must be reasonably satisfied that one, a fraud was committed by Lemmie Ruffin or other agents of Pacific Mutual, and that that fraud was committed by that agent while acting within the line and scope of their employment with Pacific Mutual Life Insurance Company. Even though fraud was not sanctioned by Liberty Mutual, I mean by Pacific Mutual, they are still responsible for the acts of the agents committed while acting within the line and scope of the employment.

Now, if after full and fair consideration of all the evidence in this case you are reasonably satisfied from the evidence that one or both of the

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defendants, that is either Lemmie Ruffin or Lemmie Ruffin and Pacific Mutual Life Insurance Company, is guilty of fraud, I used the word guilty again, is liable for the fraud to these plaintiffs, to one or more of the plaintiffs, then you must assess, you must find for that particular plaintiff and assess damages.

Damages is a money award which the law says you should award the plaintiffs. [sic] One, to reasonably compensate that plaintiff for the loss that they sustained. Two, in a case of fraud, if you find fraud, you may at

your discretion award, what is known as punitive damages.

Now, the burden of proof is upon the plaintiffs, again not only to prove the allegations of the complaint or to prove that a fraud had been perpetrated upon them by one or both defendants, but that they were damaged and that the damage was the direct result of the fraud. That is, as a direct or proximate result of the fraud by one or both of the defendants the plaintiffs were in fact damaged. If you are reasonably satisfied of both of those, fraud was perpetrated or committed, second, the plaintiffs

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were injured as a direct result of that, then you must assess damages.

Damages in fraud cases are twofold. One is compensatory, that is you should award the plaintiff, and of course you know there is four, I won't go down each one but whichever case you're taking up whatever plaintiff's case, and you find that that plaintiff should be awarded a judgment then that particular plaintiff, you should award that particular plaintiff whatever amount of money that person expended, out of pocket expense as a direct or proximate result of the fraud.

Second, you should award as part of compensatory damages, you should award that plaintiff damages which you feel would reasonably compensate that plaintiff for any mental anguish or mental suffering, embarrassment, humiliation, [sic] et cetera, which they received as — which was inflicted upon them as a direct or proximate result of the fraud.

Now, the out of pocket expense is, you can't guess about that. You have heard the evidence that a certain

amount of money which they were out. The mental anguish and other elements there is no

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formula for you to pull out, in other words there is no set figure. It's a figure which should not be based on bias or sympathy, just imagination, or picked out of the air. It should be a figure which would reasonably compensate the plaintiffs for whatever damage you feel was inflicted upon them, to reasonably compensate.

Now, if you find that fraud was perpetrated then in addition to compensatory damages you may in your discretion, when I use the word discretion, I say you don't have to even find fraud, you wouldn't have to, but you may, the law says you may award an amount of money known as punitive damages.

This amount of money is awarded to the plaintiff but it is not to compensate the plaintiff for any injury. It is to punish the defendant. Punitive means to punish or it is also called exemplary damages, which means to make an example. So, if you feel or not feel, but if you are reasonably satisfied from the evidence that the plaintiff, whatever plaintiff you are talking about, has had a fraud perpetrated upon them and as a direct result they were injured and in addition to

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compensatory damages you may in your discretion award punitive damages.

Now, the purpose of awarding punitive or exemplary damages is to allow money recovery to the plaintiffs, it does to the plaintiff, by way of punishment to the defendant and for the added purpose of protecting the public



by deterring [sic] the defendant and others from doing such wrong in the future. Imposition of punitive damages is entirely discretionary with the jury, that means you don't have to award it unless this jury feels that you should do so.

Should you award punitive damages, in fixing the amount, you must take into consideration the character and the degree of the wrong as shown by the evidence and necessity of preventing similar wrong.

So, if you feel that the plaintiff should prevail against one or both of the defendants then you should award compensatory damages and in addition to that, which you feel would reasonably compensate the plaintiffs for the loss, compensatory loss, in this case, and in addition you may in your discretion—

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award punitive damages. I have just told you the purpose of punitive damages.

Now, there are four verdicts. There are four verdicts you will return, there are three possible verdicts that correspond with the four plaintiffs, and there are three possible verdicts in each of the plaintiffs' cases. You could find in favor of the plaintiff against both defendants. You could find in favor of both defendants and against the plaintiffs. You could also find in favor of plaintiffs against one of the defendants and in favor of the other.

Now, only one way can you do that. You could find, you could under the evidence if you are reasonably satisfied that Lemmie Ruffin committed fraud, then you should find a verdict against him. However, if you are not reasonably satisfied at the time Lemmie Ruffin committed the fraud that he was acting as an agent of Pacific

Mutual Life Insurance Company, but was acting on behalf of another or without the line and scope of his employment of Pacific Mutual Life Insurance Company, then you must find in favor of them. So, you would find against

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Lemmie Ruffin and in favor of Pacific Mutual if that were your verdict.

You cannot find against Pacific Mutual Life Insurance Company and in favor of Lemmie Ruffin under the evidence in this case. In other words, if you find against Pacific Mutual you have got to find against Lemmie Ruffin. The reverse is not true if you find against Lemmie Ruffin, you don't necessarily have to find against Pacific Mutual. You would have to believe from the evidence, be reasonably satisfied, that Lemmie Ruffin was acting within the line and scope of his employment.

So, there are three possible verdicts in each case. Let me go over it just briefly for each plaintiff. Cleopatra Haslip versus these defendants. If after a full and fair consideration of all the evidence in this case you are reasonably satisfied from the evidence that Lemmie Ruffin committed a fraud, and I have given you the element, I won't go over that again, I have given you the elements of fraud, that Lemmie Ruffin committed a fraud and that at the time he committed the fraud he was acting as an agent within the line and scope of his employment

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with Pacific Mutual Life Insurance Company and as a direct result of that fraud he, Cleopatra Haslip was injured, then the form of your verdict will be we, the jury, find in favor of the plaintiff, Cleopatra Haslip, and against the defendant, Lemmie Ruffin, Jr. and Lemmie L. Ruffin, Jr. doing business as L. L. Ruffin Insurance Agency and Pacific Mutual Life Insurance Company, that is a verdict against both defendants, and assess the plaintiff's damages at blank, and that blank would be filled in by the jury with an amount of money which would include compensatory damages. That amount of money which you feel would reasonably compensate the plaintiffs for the compensatory damages in this case, and I have gone over that.

And if in your discretion you should award an amount of punitive adammages [*sic*] you would include that in this award and that would be filled in by the jury and the figure you just write it out.

If after the same full and fair consideration of all the evidence in this case you are reasonably satisfied from the evidence that Lemmie Ruffin was guilty of fraud and as a direct

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result of that fraud, and I used the word guilty again and I try not to do that, committed fraud and as a result of that Cleopatra Haslip was injured. However, you are not reasonably satisfied from the evidence that Lemmie Ruffin at the time he committed fraud upon her was acting within the line and scope of his employment with Pacific Mutual Life Insurance Company, then the form of your verdict would be, we the jury find in favor of the

plaintiff, Cleopatra Haslip and against the following defendants. It would be Lemmie Ruffin here, and assess the plaintiff's damages at that amount of money. Whatever that amount of money would be, would be compensatory and/or punitive. We further find in favor of the following defendant, and that would be Pacific Mutual.

If this were your verdict, and we probably ought to fill, [*sic*] the only way you could return this verdict would be against Lemmie Ruffin and in favor of Pacific Mutual. In other words you would find this verdict, would be finding against Lemmie Ruffin and in favor of Pacific Mutual. Of course the other possible verdict would be after a full and fair

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consideration of all the evidence in this case you are not reasonably satisfied that fraud was committed by anyone or that the plaintiff, Cleopatra Haslip was injured as a direct result of it.

Another form of your verdict would be, we the jury find in favor of the defendant Lemmie L. Ruffin and Lemmie Ruffin doing business as L. L. Ruffin Insurance Agency and Pacific Mutual Life Insurance Company and against the plaintiff, Cleopatra Haslip, that would just be a verdict in favor of both defendants.

That is true of each and every one of these, the same would be true. Now, you don't have to find in favor of every — in other words, you could find in favor of some plaintiffs and against others. You may find that you may be reasonably satisfied that one or more of the plaintiffs was not injured as a direct result of the action. Even if fraud was committed you may fail to be reasonably satisfied that that particular plaintiff was injured. You may find that that particular plaintiff did not — if there



was any representation, even though they were false that particular plaintiff did not rely upon it.

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So, what I am saying is you don't have to find against all the plaintiffs or in favor, they don't have to be consist, [sic] the plaintiffs [sic] verdicts don't have to be consistent from the evidence. I mean you go from the evidence if you find from the evidence or you are reasonably satisfied from the evidence all four plaintiffs should recover for one or both of the defendants then you return a verdict in favor of four plaintiffs. If you are not reasonably satisfied that any of plaintiffs should recover, you find in favor of the defendant and against all the plaintiffs.

If you are reasonably satisfied that some of the plaintiffs should recover but others should not, then you find in that. What I am saying is the verdict forms are consistent. In other words there is a verdict in favor of each plaintiff and against both defendants, and each plaintiff against one defendant and in favor of the other and each against each plaintiff in favor of both defendants.

Now, whichever of these verdicts you return of these four verdicts returned, they must be unanimous. Ladies and gentlemen, that means all of you must agree to it. It doesn't mean a majority

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vote, it doesn't mean eleven out of twelve, it means all of you. That doesn't mean you have to go back there and just as soon as you get back there take a vote and everybody raise their hand at the same time and instantaneously agree to it, it doesn't mean that.

You haven't discussed this case with anyone during the course of this trial. You haven't talked about it with each. [sic] You are now going to talk about it for the first time. Some of you may have heard the evidence different from others. Some of you may receive evidence different. In other words, one witness, I mean one juror may say, well, I don't believe this, and another one say, yes, I do. Well, you deliberate, you exchange ideas, you draw upon each other's experiences and each fellow juror's experiences, your common sense and their common sense. You deliberate, you talk to each other, you listen to each other.

But when I say the verdict must be unanimous I do mean this, that when the foreperson of the jury comes into the court and says that the jury has reached a verdict, I will line you up behind that rail and I will ask the foreerpson [sic] to read the

[Page 906 JURY CHARGE BY COURT]

verdict and that person does when that verdict is read each and every member of this jury must agree with it. That is, you must be prepared, and I will ask you once the verdicts are read, I will ask each and every juror if that is your verdict and you must say yes in order for me to receive it. If one says no, then you go back and keep delierating. [sic]

Select one of your nubmer [sic] to served as the foreperson of the jury. That person, I suggest may be, you wouldn't have to do it this way because nobody is going to ask you what you do while it is going on or after it is over, but I suggest maybe the best time to do it is at the beginning. First thing you do is select a foreperson. Again, that is just my suggestion to you. You don't have to do it that way. But you have got to



select a foreperson sometime during the deliberation that person — the reason I say it may be, the outset is a good time to do it, because you have a person who kind of sets the format of the deliberations, keep them orderly, whatever. That person would sign his or her name to the four different forms which correctly reflect the verdict of the entire jury. That person would serve

\* \* \* \*



# PACIFIC MUTUAL

PACIFIC MUTUAL LIFE INSURANCE COMPANY  
HOME OFFICE NEWPORT BEACH, CA 92660  
TEL (714) 640-3011

## UNION FIDELITY

### DEDUCTIBLE

\$100 - waived for accident & hospital,  
maximum of 2 deductibles per family per  
calendar year

### CO-INSURANCE

Plan pays 80% of 1st \$5,000, accumulation  
period 5 yrs.; after \$5,000 of expenses  
pays 100% until end of 5th calendar year,  
deductible will apply in each year.

### ROOM & BOARD

Semi-private rate

### INTENSIVE CARE

3 times room & board rate

### EXTENDED CARE

$\frac{1}{2}$  room & board rate

### MENTAL OR NERVOUS DISORDER

\$10,000 maximum per cause, 50% co-insurance  
for outpatient mental illness, maximum pay-  
ment for out-of-hospital psychiatric treat-  
ments \$12.50 per visit, limit one visit per  
week

### PLAN MAXIMUM

\$1,000,000 per person

### PER CAUSE MAXIMUM

\$250,000 per person

### EXTENDED FAMILY COVERAGE

Upon death of insured employee his family's  
coverage will be extended up to 3 years with  
payment of premium for the surviving spouse  
or surviving spouse and children

DOCTOR VISITS, SURGERY  
ANESTHESIA, RADIOTHERAPY  
DIAGNOSTIC LAB, X-RAYS

Usual, reasonable & customary

AMBULANCE, NURSING,  
APPLIANCES, HOSPITAL EXTRAS

Usual, reasonable & customary

### LIFE INSURANCE

Included in program

### PRE-EXISTING CONDITIONS

Any sickness or injury for which doctor  
treatment, hospital treatment or medication  
was received or distinct symptoms were evident  
during 12 months prior to the effective date  
will not be covered until insured for 12 months  
from the effective date. For those insured  
under a previous carrier there will be up to  
\$1,000 of benefits paid equal to the lesser  
of the benefits payable under their previous  
coverage or the benefits payable under this  
policy up to a maximum of \$1,000 for the  
pre-existing condition.

PLAINTIFF'S  
EXHIBIT

### CO-ORDINATION OF BENEFITS

Benefits will be co-ordinated with any  
other group type hospital and medical plans  
union welfare plans, and government programs

JA113

PLAINTIFF'S  
EXHIBIT

7

ROOSEVELT CITY

Employee: \$49.68

Employee plus dependents: \$105.90

There is a \$10.00 monthly administration fee.

These rates are subject to final enrollment if actual enrollment varies significantly from the proposed enrollment.

Rates are guaranteed for six months from the effective date of the master policy.

Eddie Hargrove	7.20
Cynthia Craig	19.68
Alma Calhoun	105.90
Cynthia Hargrove	105.90
TOTAL	238.68
Pay for month	21.40

DECL  
C  
-  
-  
-  
-

JA-114





JA-115



WILLIAM H. HARRIS

WILLIAM H. HARRIS COMPANY

WILLIAM H. HARRIS  
WILLIAM H. HARRIS  
WILLIAM H. HARRIS

December 7, 1937

Mrs. Peindexter  
City of Roosevelt  
4543 Bessemer Super Hwy.  
Roosevelt City, AL 5600

Dear Mrs. Peindexter,

Your premiums are now due for December. Please forward a check in the amount of \$268.68. Thank you.

Eddie Hargrove	7.20
Cynthia Craig	49.68
Alma Calhoun	105.90
Cleopatra Haslip	<u>105.90</u>
TOTAL	268.68

Sincerely,

Lennie L. Ruffin

LR/da

JA-116



# PACIFIC MUTUAL

PACIFIC MUTUAL LIFE INSURANCE COMPANY

BIRMINGHAM LUNA AGENCY  
THE TOWERS SUITE 400 EAST  
AND ALCON PARKWAY WEST  
BIRMINGHAM ALABAMA 35203  
TELEPHONE (205) 942-6438

January 5, 1982

Mrs. Poindexter  
City of Roosevelt  
4543 Bessemer Super Hwy.  
Roosevelt City, AL 35020

Dear Mrs. Poindexter,

Your premiums are now due for January. Please forward a check in the amount of \$268.68. Thank you.

Eddie Hargrove	7.20
Cynthia Craig	49.68
Alma Calhoun	105.90
Cleopatra Haslip	<u>105.90</u>
TOTAL	268.68

Sincerely,

Lemmie L. Ruffin

LLR/dla

JA-117





PACIFIC MUTUAL

PACIFIC MUTUAL LIFE INSURANCE COMPANY  
HOME OFFICE: NEWPORT BEACH, CA 92660  
TEL. (714) 640-3011

ROOSEVELT CITY

Employee: \$49.68

Employee plus dependents: \$105.90

There is a \$10.00 monthly administration fee.

These rates are subject to final enrollment <sup>if</sup> actual enrollment varies significantly from the proposed enrollment.

Rates are guaranteed for six months from the effective date of the master policy.

*[Handwritten signature]*

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Underwritten by

UNION FIDELITY LIFE INSURANCE COMPANY  
Tulsa, Pennsylvania

October 7, 1981

Mr. Lemmie Lee Ruffin Jr.  
Pacific Mutual Birmingham Lupia Agency  
530 Beacon Parkway West Ste. #400  
Birmingham, AL 35209

Re: City of Roosevelt  
FLAG CASE # 1001288

Dear Mr. Ruffin:

We are pleased to enclose herewith the Administration Kit, Certificates of Insurance, and Employee Identification Cards for those insured employees covered under the captioned employer-unit coverage. We trust that you will make arrangements to deliver this promptly to your client and that you will take that opportunity to review the Administration Guide with them at that time.

If you have any questions about any of the material being sent to you, or if we can be of any service to you or your new FLAG client, please feel free to contact our office at any time. We are as close as your telephone for your immediate needs. Our WATS number is (800) 255-6029.

Thank you for having placed this coverage in the insurance program available to the Federated League of Associated Groups Trust. We will do our utmost to give you and your client the very best possible service.

Kindest regards,

Ralph S. Passman

RSP/ce

Enclosure(s)

cc: MD - Patrick Lupia  
Tim McCoy & Assoc.  
Employer - City of Roosevelt

MARKETED BY

TIM MC COY & ASSOCIATES

P.O. BOX 3409

AUSTIN, TEXAS 78764

TELEPHONE 512/443-1512

DEPOSITION  
EXHIBIT

36 1/19/87

JA-119

RALPH S. PASSMAN & ASSOCIATES, INC.  
INSURANCE MARKETING & ADMINISTRATION

4200 SOMERSET DRIVE

PRAIRIE VILLAGE, KANSAS 66208

TELEPHONE 913/383-3883

RSP/A

OCT 23 1981

LEGAL MARKETING DIV

RECEIVED

TERMINATED CASE MASTER FILE AS OF 01/08/82

(TERMINATION IS EFFECTIVE THE DAY FOLLOWING THE 'PAID THRU' DATE)

NUMBER.....1001288

NAME.....CITY OF ROOSEVELT  
ADDR-LINE 1.....C/O MR. PAT LUPJA  
ADDR-LINE 2.....530 BEACON PKWY W #400  
CITY/STATE/ZIP..BIRMINGHAM, AL 35209

INCEPTION DATE., 09/01/81  
TRUST #.....000000001  
AREA CODE.....2

PAID THRU.....09/30/81  
LAST BL'G DATE..12/7/78

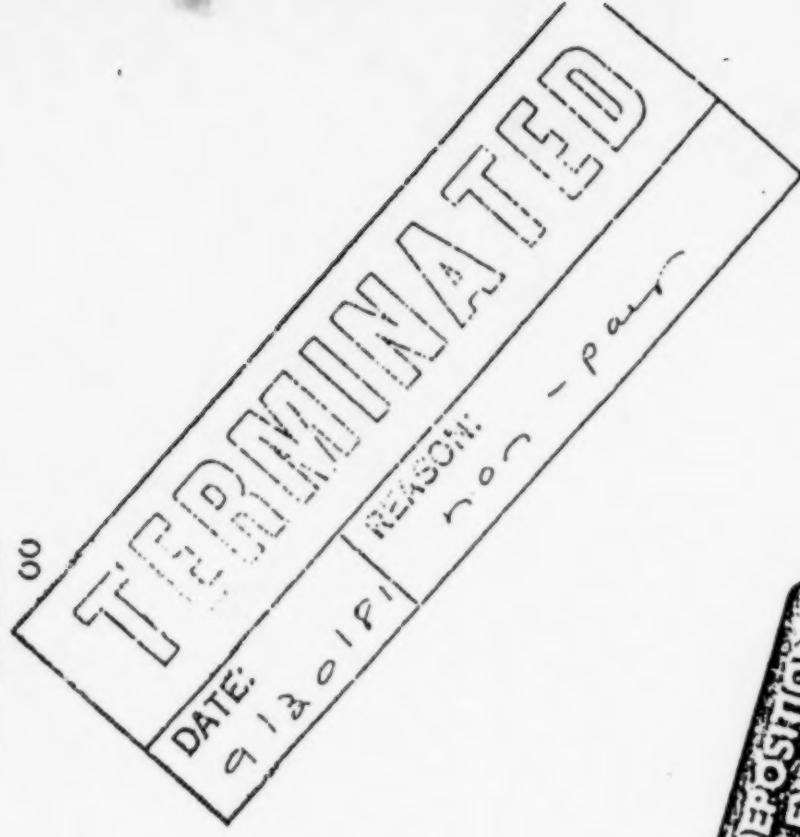
ADD'L ADM FEES.....0

CURRENTLY DUE...00  
PAST DUE AMOUNT..00  
UNPAID LIFE PORTION...80.10  
PAID IN ADV PREMIUMS...00  
UNPAID ADM FEES.....00

DUE DATE.....01 RATE INCREASE PRCT..##.00 %

INSURING CO.....01 - UNION FIDELITY LIFE  
MKT'G FIRM.....755 - PATRICK LUPJA  
AGENT.....036492 - LEMMIE L RUFFIN  
ADMINISTRATION FEE...10.00  
COMMISSION RATE.....10 %

PREMIUMS PAID...00  
CURR/MONTH.....YR/TO/DATE GRAND/TOTAL  
00



case 115182 +  
to 2115 trn

DEPOSITION  
EXHIBIT  
P's 33  
1/19/87

JA-120



# CASE MASTER FILE AS OF 10/07/81

NUMBER.....1001288

NAME.....CITY OF ROOSEVELT  
 ADDR-LINE 1.....  
 ADDR-LINE 2.....4543 BESSEMER SUPER HWY  
 CITY/STATE/ZIP..ROOSEVELT, AL 35020

INCEPTION DATE..09/01/81  
 TRUST #.....C00000001  
 AREA CODE.....2

PAID THRU.....00/00/00  
 LAST BL'G DATE..00/00/00

CURRENTLY DUE... 00  
 PAST DUE AMOUNT. 00

ADD'L ADM FEES..... 2

UNPAID LIFE PORTION..... 00  
 PAID IN ADV PREMIUMS... 00  
 UNPAID ADM FEES..... 00

DUE DATE.....01

RATE INCREASE PRCT..

#.00 %

INSURING CO.....01 - UNION FIDELITY LIFE  
 MKT'G DIR.....755 - PATRICK LUPIA  
 AGENT.....036492 - LEMMIE L RUFFIN

ADMINISTRATION FEE...10.00

COMMISSION RATE.....10 %

CURR/MONTH

YR/TO/DATE

PREMIUMS PAID...

.00

GRAND/TOTAL

.00

10/6/81

*Change of Address  
 per letter (inmate) from Gt of 10/6/81  
 \* For GILLINGS ONLY \*  
 the right address  
 Joe New Master*

DEPOSITION  
 EXHIBIT  
 35  
 1/19/87

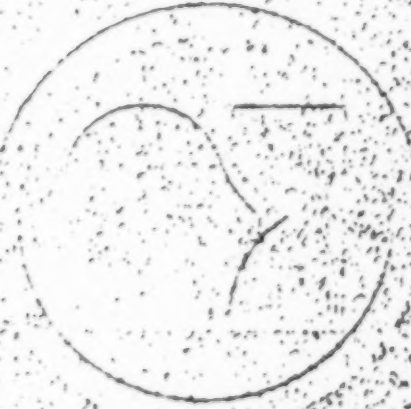
JA-121

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY  
AT THE TIME OF FILMING. IF AND WHEN A  
BETTER COPY CAN BE OBTAINED, A NEW FICHE  
WILL BE ISSUED.

PLAINTIFF'S  
EXHIBIT

- A



PACIFIC MUTUAL

# CENTURY CONTRACT

FOR CAREER AGENTS

Pacific Mutual Life Insurance Company (PM)  
and

*CEMMIE WELSH* (Agent)

have agreed that Agent shall become a Career Agent of PM on

*MARCH 16, 1980*

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#### SECTION 1—Agent's Authorities.

Agent is authorized to solicit and take applications for all forms of insurance policies issued by PM within the territory of the agency where appointed. Agent shall immediately deliver to PM all completed applications for insurance.

Agent is authorized to collect the initial premium and no other on insurance policies. All premiums collected by Agent shall be received by him in trust and shall immediately be transmitted in full to PM.

Agent is authorized to deliver insurance policies produced by him. No policy shall be delivered if Agent knows of any material change in the health of any proposed insured. No policy shall be delivered unless the initial premium is collected in full.

Agent is authorized to service insurance policies which have been produced by him or which are assigned to him by PM for servicing.

Agent shall have no authority other than expressly provided in this contract and agrees not to do or attempt to do any of the following:

- Incur any expense or liability on account of PM without specific written authority.

- Make or alter any policy; extend the time for paying any premium; or waive any provision of any policy.

- Use any advertising or sales material, or any form in any way relating to the business of insurance other than those approved by PM.

- Participate in the affairs of any other insurance company without the prior written consent of PM.

This contract shall not be construed to create the relationship of employer and employee between PM and Agent, and Agent shall be free to exercise his own judgment in determining the persons he will solicit, and the time, manner, and place of solicitation. Without interfering with Agent's freedom of action, PM may from time to time prescribe rate books, manuals, and rules and regulations which shall be observed by Agent.

#### SECTION 2—Agent's Compensation.

While this contract is in effect, PM agrees to pay or credit to Agent, on premiums paid to PM on policies produced under this contract, renewal commissions, service commissions, and other compensation provided in the applicable Career Agent's Compensation Schedules and, in addition, first year commissions according to either Method A or Method B described below.

##### Method A.

First year commissions, except on Deferred Annuity policies, will be calculated by applying the first year commission rate as provided in the applicable Career Agent's Compensation Schedules to the annual mode premium for policies produced under this contract, with such first year commissions being paid or credited in accordance with the actual mode of premium payment for such policy as follows:

Annual Premium Policies: First year commissions will be paid or credited in one lump sum.

Other Premium Modes: First year commissions will be annualized and paid or credited in six equal semi-monthly installments. On termination of a policy prior to payment to PM of the full first year premium the unearned balance of first year commissions will be charged back in six equal semi-monthly installments.

First year commissions on Deferred Annuity policies will be paid as described under Method B.

JA-123



Group and Pension Cases. When a Group or Pension Case is placed in force, commissions will be annualized by taking an estimate of the commissions which will be earned during the first policy year. The annualized first year commission will be paid or credited in six equal semi-monthly installments. The commissions paid or credited will subsequently be adjusted to actual commission earned during the first policy year.

#### Method B

First year commissions will be paid by applying the first year commission rate as provided in the applicable Agent's Compensation Schedules to first year premiums as they are actually paid to PM.

Except for first year commissions on Deferred Annuity policies which shall be paid solely in accordance with Method B, first year commissions will be paid in accordance with Method A. Unless Agent has initially requested Method B in writing, any subsequent change in the method of payment and the effective date of any such change shall be subject to PM's rules and regulations. PM reserves the right to change or discontinue payment of first year commissions by Method A at any time.

After termination of this contract, PM agrees to pay to Agent if Agent has not violated any provision of this contract the commissions which qualify as "vested" under the terms of the applicable Career Agent's Compensation Schedules. From time to time, PM may substitute new Career Agent's Compensation Schedules for previously issued Schedules. However, no new Schedule will affect policies issued prior to its effective date. PM will undertake to provide Agent with a copy of every new Schedule before its effective date. However, failure of Agent to receive a copy of any new Schedule shall not impair its effectiveness.

The right of Agent or any other person to receive any compensation payable under this contract shall be subordinate to the right of PM to offset and apply such compensation against any indebtedness or liability of Agent to PM. Agent shall refund to PM all compensation paid to him on premiums which have been refunded by PM. Agent will be entitled to no compensation on any policy unless his name appears on the application. If more than one agent's name appears on an application, the compensation will be divided equally among all such agents unless otherwise specified on the application.

The compensation provided by this contract shall constitute full payment for all efforts expended and expenses incurred by Agent in his performance under this contract.

While this contract is in effect, Agent will be entitled to no compensation on any policy reinstated ninety days or more after the due date of any unpaid premium unless the application for reinstatement was secured by him. After termination of this contract, Agent shall be entitled to no compensation on any policy reinstated forty-five days or more after the due date of any unpaid premium.

Compensation on any policy which, in the judgment of PM, takes the place of other insurance on the same life (including without limiting the same to conversions and reissues) shall be determined by the rules and regulations of PM.

No further compensation shall be payable under this contract if Agent shall at any time attempt to:

Misappropriate any funds of PM; any general agent of PM; or any applicant or policyholder of PM.

Induce any agent to terminate an agent's contract with PM or with any general agent of PM.

Induce any policyowner to lapse, surrender, or replace in another company a policy issued by PM.

### SECTION 3—Termination of Contract.

This contract shall terminate as follows:

Immediately upon the death of Agent.

Upon 10 days written notice given by either party to the other with or without cause.

At the option of PM, immediately upon written notice if Agent shall have failed to comply with any of the provisions of this contract; with any of the rules and regulations of PM; or with any of the laws or regulations of any governing body relating to the performance of this contract.

Before this contract shall have been continuously in effect for 15 years, on the March 15th following the end of the second or any subsequent calendar year after the date of this contract in which the first year commissions (life, health, and group) paid to Agent are less than \$1,500. After this contract shall have been continuously in effect for 15 years, on the March 15th following the end of any calendar year if the average of the first year commissions (life, health, and group) paid to Agent in that and the preceding calendar year is less than \$1,500. The \$1,500 first year commission requirement shall not apply during any period of total disability (of which PM shall be the sole judge) of Agent prior to his age 65.

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Written notice of termination of this contract shall be given as follows:

If by PM to Agent, by delivery in person to Agent, or by mail addressed to Agent at his last known address.

If by Agent to PM, by delivery in person or by mail to an agency office or the Home Office of PM.

#### SECTION 4—Miscellaneous Provisions.

This contract is personal to Agent and none of his authorities shall be transferable.

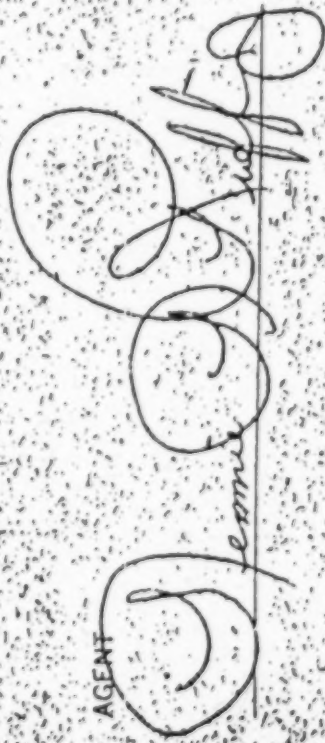
Agent shall not assign any of his rights or interests under this contract without the written consent of PM, and no assignment of any of his rights or interests will be valid without such consent. In all instances, the consent of PM shall be considered to reserve to it the offset rights provided in Section 2 of this contract, whether or not such reservation is expressed in the consent.

Compensation payable after the death of Agent shall be paid to Agent's executor or administrator unless Agent has designated in writing, on a form provided by PM, a person to receive this compensation. Agent may change such designation from time to time but only by filing a written request at the Home Office on a form provided by PM. Any such change shall not take effect until accepted and recorded by PM, but when recorded, whether or not Agent be living, shall take effect as of the date the request was signed.

No failure by PM to enforce any provision of this contract shall affect PM's right thereafter to enforce such provision, nor shall such failure affect its right to enforce any other provision of this contract.

No amendment or modification of this contract shall be valid unless executed in writing by PM.

AGENT



PACIFIC MUTUAL LIFE INSURANCE COMPANY



President



Vice President Agency

Executed by:



Manager, Agents Contracts and Records



(1)

TURN. 362

AGENCY

PLAINTIFF'S  
EXHIBIT



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PACIFIC MUTUAL

# PERSONAL HISTORY SUMMARY

CONFIDENTIAL

Name Lemmie Lee Ruffin  
(First) (Middle) (Last)

Residence Address 3212 Cedar Ave. S.W. Bham Alabama  
(Street and Number) (City) (State) Length of time at this address 5 years

Previous Address 3517 Ellis Ave. S.W. Birmingham Alabama  
(Street and Number) (City) (State) Length of time at this address 1 1/2 years

Length of residence in community <u>6</u> (Yrs.) <u>6</u> (Mos.)	Date of Birth <u>6-2-55</u>
Telephone Res. <u>925-8169</u> Bus. <u>942-5657</u>	Social Security Number <u>423-76-4807</u>
Verification of previous employment	

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# EDUCATION

TYPE OF SCHOOL	NAME AND LOCATION OF SCHOOL	MAJOR FIELD OF STUDY	MONTHS IN ATTENDANCE	FULL OR PART-TIME	DAY OR NIGHT SCHOOL	YEAR LEFT OR GRADUATED	DEGREE
High School	Midfield High School Midfield Alabama	Diana	18 mo	Full	Day	1973	Associate
College							
Graduate School							
Other Schools or Courses	L.U.T.C. Part I Saford University	Lut.C.	9	Part	Day	1978	Lut.C.I.

## OCCUPATIONAL EXPERIENCE - SINCE LEAVING SCHOOL

FROM	TO	EMPLOYED BY OR OTHERWISE OCCUPIED (GIVE NAME, STREET NO. NUMBER, CITY AND STATE)	EMPLOYED AS	EMPLOYED AT (CITY AND STATE)	MONTHLY EARNINGS	REASON FOR LEAVING
12-78	3-80	Commwealth Ins. CO 800 BEACON PARKWAY W. Birmingham Alabama 35208	Agent	Bham AL	1,500	to Gen P.M. terminated for misconducting
2-77	12-78	American National Ins. CO 2926 Central Ave. Birmingham Alabama 35209	Agent STAFF Mgr.	Bham AL	1,500	to 70 to Arrived Robin
6-73	2-77	America East Iron PPE CO 1637 16th ST NO Birmingham Alabama	Iron Rwyer short order cook	Bham AL	550 <sup>23</sup> 300 <sup>00</sup>	to 70 to AC:PC 2
6-72	6-73	Shoreys Big boy Restaurant 1057 3rd Ave W. Birmingham Alabama	cook	Bham AL	300	DID NOT RECEIVE pay

(2/2-78 (2 days only) Stowers Rest  
at mobile pr  
Mobile, Alabama

## SALES EXPERIENCE

COMPANY	PRODUCT(S) SOLD	DATES EMPLOYED	METHODS OF PROSPECTING (COLD CALLING, REFERRALS, SUPPLIED LEADS, ETC.)	AVERAGE MONTHLY EARNINGS	
				SALARY	COMMISSIONS
American National Insurance		2-25-77	Cold Calling Referrals		1,500.00
Commwealth Insurance		12-4-78	Cold Calling Referrals		1,500.00

Do we have your permission to communicate with your present and past employers in determining your qualifications for the life insurance agent.

Present: YES ☒

NO ☐

Past: YES ☒

NO ☐

JA127



# FINANCIAL STATUS

Savings, cash, & checking account \$ 500.00  
 Automobile, furniture (cash value) \$ 15,000.00  
 Real estate (cash value) \$ 62,500.00  
 Life insurance (cash value) & investments \$ 500.00  
 Other (name) \_\_\_\_\_  
 Total assets \$ 78,500.00

Liabilities  
 Mortgages on home \$ 17,100.00  
 Mortgages on other property \$ 0.00  
 Bills presently due (Car sales, etc.) \$ 6,500.00  
 Loans \_\_\_\_\_  
 Other (name) \_\_\_\_\_  
 Total liabilities \$ 23,600.00

Net worth (total assets minus total liabilities) \$ 54,900.00

## MONTHLY EXPENSES

Fixed Expenses  
 Rent or mortgage \$ 161.00  
 Car payments \$ 0.00  
 Contract payments for furniture, etc. \$ 240.00  
 Charge account loan payments \$ \_\_\_\_\_  
 Utilities \$ 75.00  
 Federal and State Income Taxes \$ \_\_\_\_\_  
 Life Insurance \$ 40.00  
 Other Insurance (health, auto, etc.) \$ 32.00

General Expenses  
 Food \$ 100.00  
 Clothing \$ 20.00  
 Auto operation \$ 25.00  
 Medical-Dental \$ \_\_\_\_\_  
 Business Expenses \$ \_\_\_\_\_  
 Total \$ 145.00

Miscellaneous Expenses  
 Entertainment \$ 10.00  
 Church & Charities \$ \_\_\_\_\_  
 Other (itemize) \$ \_\_\_\_\_  
 Total \$ 10.00

Total budget for 2 adults and 2 children \$ 703.00  
 less spouse's income \$ 400.00  
 less other income \$ \_\_\_\_\_  
 Earned monthly income needed \$ 303.00

Total \$ 548.00

## LIFE INSURANCE OWNED

Company American National  
 Amount policy 25,000  
 Kind of policy LP 495  
 Year of issue 1978  
 Liens against 0  
 Prem. per year 270.00

Company Commercial  
 Amount policy 30,000  
 Kind of policy WL  
 Year of issue 1979  
 Liens against 0  
 Prem. per year 285.00

## HOSPITALIZATION AND DISABILITY INSURANCE OWNED

Company American National  
 Amount policy 1,000.00  
 Kind of policy Gen'l  
 Year of issue 1978  
 Liens against 0  
 Prem. per year 165.00

Company \_\_\_\_\_  
 Amount policy \_\_\_\_\_  
 Kind of policy \_\_\_\_\_  
 Year of issue \_\_\_\_\_  
 Liens against \_\_\_\_\_  
 Prem. per year \_\_\_\_\_

## YOUR HEALTH

Please describe any illnesses that you have had in the last five years. NONE



# MEMBERSHIPS AND ACTIVITIES

Groups with which you have spent time in the past six months. (Exclude any organization that would indicate race, creed, ancestry, national origin, religion, sex, or marital status.)

NAME OF ORGANIZATION OR GROUP OF WHICH YOU ARE A MEMBER	HOW MUCH TIME SPENT WITH THEM AND OCCASION	OFFICES HELD DURING PAST THREE YEARS
1. none		
2.		
3.		
4.		

**REFERENCES** In the first 3 spaces below, give the names and addresses of three individuals (not relatives), who know something of your background, who know you well, and to whom this Company may refer. In the bottom 3 spaces, give the names and addresses of 3 people who have a sales or marketing background, who know you, and to whom this Company may refer.

NAME	ADDRESS	OCCUPATION	TELEPHONE
(1) W. L. Williams	1706 - 17 <sup>th</sup> St S.W. Bldg A1	Machine Operator	925-6342
(2) Ralph Bolon	423 Frank Nelson Bldg A	Attorney	328-2463
(3) Timothy Robinson	2316 Euclid Ave	Stock Picker	781-2766
(1)			
(2)			
(3)			

The Federal "Fair Credit Reporting Act" requires us to notify individuals of the fact that an investigative consumer report may be made on them. This notice is given you in compliance with this law.

In connection with your application for an Agent's Contract, a routine investigative consumer report has been requested. This report will include information concerning character, general reputation, personal characteristics and mode of living. This information may be obtained through personal interviews with your friends, neighbors and associates. Should you, as the consumer, desire additional information as to the nature and scope of the investigation you may write to Pacific Mutual Life Insurance Company, Manager, Agents' Contracts and Records.

2-28-80

Date

*James H. Duffing*  
Signature

JA-129

# REPORT OF TERMINATION

☒ AGENT ☐ BROKER

SEND IN DUPLICATE TO AGENTS' CONTRACTS AND RECORDS  
FOR AGENTS IT IS IMPORTANT TO INCLUDE PRESENT HOME ADDRESS, AND REASON FOR LEAVE OR TERMINATION.

Agency No. <b>362</b>	General Agent or Manager <b>Lemmie L. Ruffin Jr.</b>	Date <b>July 30, 1982</b>
	I.O. Code <b>Y6X</b>	Present Home Address <b>3212 Cedar Avenue S. W. Birmingham, Alabama 35221</b>

Termination Agreement Attached <input type="checkbox"/>	Form 9431 General Agent <input type="checkbox"/>	Form 9430 Mgmt. Agcy. <input type="checkbox"/>	Effective Date <b>8/11/82</b>	TERMINAL COMMISSIONS: APPLIES TO AGENTS OF GENERAL AGENTS ONLY
Termination Notice Attached <input type="checkbox"/>	Form 9432 General Agent <input checked="" type="checkbox"/>	Form 9429 Mgmt. Agcy. <input type="checkbox"/>	Date <b>8/11/82</b>	INDIVIDUAL - QUALIFICATION FOR VESTED COMMISSIONS - <input type="checkbox"/> YES \$1,500 1st Yr., Premium Paid During Each Accounting Year <input type="checkbox"/> NO Death or P.T.D. 1/5 Reduction Waived for Qualified Years.
<input type="checkbox"/> DECEASED	<input type="checkbox"/> P.T.D.			COMMERCIAL <input type="checkbox"/> YES <input type="checkbox"/> NO
LICENSE CANCELLED	<input type="checkbox"/> YES DATE _____ <input type="checkbox"/> RESIDENT <input type="checkbox"/> NON-RESIDENT _____ <input type="checkbox"/> NOT RENEWED <input checked="" type="checkbox"/> NO			*(If yes - indicate years, if any, for which terminal commissions are not payable.)

REASON FOR TERMINATION (Explain Fully - use space below if necessary)

☒ AGENT PERFORMANCE RATING FORM ATTACHED

AGENTS' GROUP PLANS - FORMS ATTACHED:

Group Life - ☐ Notice of Conversion Rights under Group Life, Medical and Survivor Income Policy (6122)  
Life & Medical - ☐ Application for Conversion (GR-9337)

General Agent must Sign

## LEAVE REASON

☐ 020 Worker's Comp  
☐ 030 Sick (On-Salary)  
☐ 031 Sick (Off-Salary)  
☐ 033 Personal Business (On-Salary)  
☐ 035 Personal Leave  
☐ 036 Military Duty  
☐ 152 Maternity  
☐ 155 Short Term Disability  
☐ 999 Other

## TERMINATION REASON

☐ 01 Dissatisfied with Pay  
☐ 02 Dissatisfied with Supervisor  
☐ 03 Dissatisfied with Promotion and Opportunities  
☐ 04 Dissatisfied with Hours  
☐ 06 Dissatisfied with Job Content  
☐ 09 Dissatisfied with Employment Hours  
☐ 10 Dissatisfied with Company Policy  
☐ 19 Other Dissatisfaction  
☐ 20 Illness In Family  
☐ 21 Health  
☐ 22 Maternity  
☐ 23 Marriage  
☐ 24 Relocation  
☐ 25 Return to School  
☐ 26 Military  
☐ 27 Family Reasons  
☐ 28 Deceased  
☐ 29 Retirement  
☐ 99 Other

JA-130

362 Lemmie L. Ruffin, Jr

T/C TKLyer 7/30/82

Pat is trying to find him a job.

Does not want to cut off his  
commissions at this point.

He will get back to me today.

Send Termination notice per Pat Typin 7/30/82  
grr

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